

**AMERICAN LEGISLATIVE EXCHANGE COUNCIL**

**MEMORANDUM**

**TO:** PUBLIC SAFETY AND ELECTIONS TASK FORCE MEMBERS  
**FROM:** COURTNEY O'BRIEN, TASK FORCE DIRECTOR  
**DATE:** OCTOBER 27, 2011  
**RE:** 35 DAY MAILING—2011 STATES AND NATION POLICY SUMMIT

The American Legislative Exchange Council will host its 2011 States and Nation Policy Summit **November 30-December 2** at the Westin Kierland Hotel in **Phoenix, Arizona**. The early registration deadline is November 7<sup>th</sup>, register for the meeting [here](#).

The Public Safety and Elections Task Force will meet on **Friday, December 2<sup>nd</sup>** from **2:00 – 5:00 pm**. The Task Force has an exciting agenda including four motions to repeal existing ALEC policy as well as the consideration of policy on the issues of automated enforcement devices, the National Popular Vote Interstate Compact, evidence-based medical treatment for substance use disorders, overcriminalization, juvenile justice, civil asset forfeiture, and prescription requirements for pseudoephedrine. We will also consider amendments to the current “ALEC Consistency in Firearms Regulation Act.”

The Task Force is also hosting an Overcriminalization Subcommittee conference call prior to SNPS on **November 4<sup>th</sup> at 11:00 AM ET**. To call in, please dial (712) 432-0075; Passcode: 448313. The Subcommittee will consider policies and hold an advisory vote on civil asset forfeiture and transparency in criminal law.

In addition, the Task Force will host a Public Safety Working Group conference call prior to SNPS on **November 9<sup>th</sup> at 12:00 PM ET**. To call in, please dial (712) 432-0075; Passcode: 676344. The Working Group will consider policies and hold an advisory vote on evidence-based medical treatment, juvenile justice and automated enforcement devices.

All Task Force members are encouraged to call in to both conference calls. If you plan on joining us, please RSVP to [csullivan@alec.org](mailto:csullivan@alec.org). We look forward to having you on the calls

**Please find the following materials enclosed:**

- Annual Meeting Agenda-at-a-Glance
- Overcriminalization Subcommittee Conference Call Agenda
- Public Safety Working Group Conference Call Agenda
- Task Force Meeting Tentative Agenda
- 2011 Annual Meeting Minutes
- Draft Model Legislation
- Supplementary Materials
- ALEC Mission Statement
- Scholarship Policies by Meeting
- SNPS Registration Forms
- ALEC Task Force Operating Procedures

I look forward to seeing all of you in Phoenix, Arizona! If you have any questions or comments regarding the meeting, please do not hesitate to contact me at 202-742-8504 or by e-mail at [cobrien@alec.org](mailto:cobrien@alec.org).

Sincerely,

Courtney O'Brien  
 Public Safety and Elections Task Force Director

# STATES & NATION POLICY SUMMIT

PHOENIX, AZ  
Nov. 30 - DEC. 2, 2011

Tuesday, November 29th

<b>Joint Board of Directors Meetings</b>	7:30 am – 5:00 pm
<b>Registration</b>	12:00 pm – 5:00 pm
ALEC Joint Board Reception and Dinner	6:00 pm – 9:30 pm

Wednesday, November 30th

<b>Registration</b>	7:30 am – 5:00 pm
Task Force Subcommittee Meetings	8:00 am – 11:30 am
<b>Exhibits</b>	9:00 am – 5:00 pm
State Chairs Meeting	9:00 am – 11:00 am
New Legislator Orientation	10:15 am – 11:15 am
<b>Opening Plenary Luncheon</b>	<b>11:30 am – 1:15 pm</b>
Task Force Chairs Meeting	1:30 pm – 2:45 pm
<b>Workshops</b>	1:30 pm – 4:15 pm
Welcome Reception	6:30 pm – 8:30 pm

Thursday, December 1st

<b>Registration</b>	7:30 am – 5:00 pm
<b>Plenary Breakfast</b>	<b>8:00 am – 9:15 am</b>
<b>Exhibits</b>	9:00 am – 5:00 pm
Workshops	9:30 am – 12:15 pm
<b>Plenary Luncheon</b>	<b>12:30 pm – 2:15 pm</b>
Task Force Meeting:	2:30 pm – 5:30pm
▪ Civil Justice	
▪ Commerce, Insurance, and Economic Development	
▪ Education	
▪ Telecommunications and Information Technology	

National Chairman's Reception, <i>by Invitation Only</i>	5:30 pm – 6:30 pm
Gala Holiday Reception	6:30 pm – 8:30 pm
Hospitality Suite	9:00 pm – 11:00 pm

<b>Friday, December 2nd</b>	
Registration	7:30 am – 2:30 pm
<b>Plenary Breakfast</b>	<b>8:00 am – 9:15 am</b>
Exhibits	9:00 am – 5:00 pm
Workshops	9:30 am – 12:15 pm
<b>Plenary Luncheon</b>	<b>12:30 pm – 1:45 pm</b>
Task Force Meetings:	2:00 pm – 5:00 pm
■ Energy, Environment and Agriculture	
■ Health and Human Services	
■ International Relations	
■ Public Safety and Elections	
■ Tax and Fiscal Policy	
<b>State Delegation Night</b>	<b>Beginning at 6:30 pm</b>



**Overcriminalization Subcommittee  
Conference Call**

**Friday, November 4, 2011  
11:00 AM ET – 12 PM ET**

**Conference Line: (712) 432-0075  
Host Code: 448313  
Please RSVP to [csullivan@alec.org](mailto:csullivan@alec.org)**

**Tentative Agenda**

- 11:00 a.m.      Welcome and Introductions**  
Representative B.J. Nikkel, *CO*, Public Sector Chair  
Mr. Marc Levin, *Texas Public Policy Foundation*, Private Sector Chair
- 11:05 a.m.      Proposed Model Legislation: Discussion and Advisory Vote**  
**REPEAL: “ALEC Comprehensive Asset Forfeiture Act” (2000)**  
**“Asset Forfeiture Process and Private Property Protection Act”**  
Mr. Lee McGrath, *Institute for Justice*  
  
**“Resolution on Transparency and Accountability in Criminal Law”**  
Mr. Marc Levin, *Texas Public Policy Foundation*
- 11:40 a.m.      DISCUSSION: “Criminal Offense Justification Act”**  
Representative BJ Nikkel, *CO*
- 11:55 a.m.      For the Good of the Order**
- 12:00 p.m.      Adjournment**



## Public Safety Working Group Conference Call

November 9<sup>th</sup>, 2011  
12:00 p.m. – 1:00 p.m. ET

Conference Line: (712) 432-0075  
Passcode: 676344

Please RSVP to [csullivan@alec.org](mailto:csullivan@alec.org)

### Tentative Agenda

**12:00 p.m.      Welcome and Introductions**

Representative Jerry Madden, TX, Public Sector Chair  
Ms. Stacie Rumenap, *Stop Child Predators*, Private Sector Chair

**12:05 p.m.      Proposed Model Legislation: Discussion and Advisory Vote**

**REPEAL: “ALEC Anti-Automated Enforcement Act”, (2001)  
“Resolution in Support of the Use of Automated Enforcement  
Devices to Reduce Injuries and Fatalities on our Nation’s Road”**

Mr. Andrew Schauder and Mr. George Hittner, *American Traffic  
Solutions*

**“Resolution in Support of Evidence-based Medical Treatment for  
Substance Use Disorders”**

Mr. Jeff Harris, *Alkermes*

**“Juvenile Offender Performance Incentive Funding Act”**

Mr. Marc Levin, *Texas Public Policy Foundation*

**12:55 p.m.      For the Good of the Order**

**1:00 p.m.      Adjournment**

AMERICAN LEGISLATIVE EXCHANGE COUNCIL

Public Safety & Elections Task Force  
2011 States and National Policy Summit  
Friday, December 2  
2:00 – 5:00 PM  
Location: TBD

- 1. Call to Order** 2:00 PM  
Attendance  
Introduction of New Members  
Approval of Minutes  
Subcommittee Announcements  
a) Overcriminalization Subcommittee  
b) Public Safety Working Group
- 2. Model Legislation** 2:20 PM
- A. REPEAL: “ALEC Resolution in Support of the Electoral College” (2007)  
REPEAL: “ALEC Resolution in Opposition to the National Popular Vote Interstate Compact” (2007)  
CONSIDER: “Resolution in Support of the National Popular Vote Interstate Compact”  
Mr. Ray Haynes, *National Popular Vote*
- B. REPEAL: “ALEC Anti-Automated Enforcement Act” (2001)  
CONSIDER: “Resolution in Support of the Use of Automated Enforcement Devices to Reduce Injuries and Fatalities on our Nation’s Road”  
Mr. Andrew Schauder and Mr. George Hittner, *American Traffic Solutions*
- C. CONSIDER: “Resolution in Support of Evidence-based Medical Treatment for Substance Use Disorders”  
Mr. Jeff Harris, *Alkermes*
- D. REPEAL: “ALEC Comprehensive Asset Forfeiture Act” (2000)  
CONSIDER: “Asset Forfeiture Process and Private Property Protection Act”  
Mr. Lee McGrath, *Institute for Justice*
- E. CONSIDER: “Resolution on Transparency and Accountability in Criminal Law”  
CONSIDER: “Juvenile Offender Performance Incentive Funding Act”  
Mr. Marc Levin, *Texas Public Policy Foundation*
- F. AMEND: “ALEC Consistency in Firearms Regulation Act”  
Ms. Tara Mica, *National Rifle Association*
- G. CONSIDER: “Prescription for Pseudoephedrine Products”  
Rep. Sue Tibbs, *Oklahoma*
- 3. For the Good of the Order** 4:50 PM  
**4. Adjournment** 5:00 PM

## American Legislative Exchange Council

Public Safety & Elections Task Force  
August 4<sup>th</sup>, 2011

### I. Preliminaries

The Task Force approved the minutes of the Spring Task Force Summit meeting by a unanimous voice vote.

### II. Presentations

1. Debate: “Electoral College v. National Popular Vote” – Moderator: Rep. Jerry Madden, TX. Panelists: Mr. Trent England, *Freedom Foundation*, Mr. Tom Golisano, *National Popular Vote*, Sen. Ray Haynes (RET.), *National Popular Vote*
2. Case Study for Leveraging Technology to Reduce the Costs of Monitoring the Perimeter Fence at State Correctional Institutions – Mr. Billy Ridge, *MMR Group*
3. Improving Voting for Military and Overseas Citizens – Ms. Cameron Quinn, *Federal Voting Assistance Program (FVAP)*, *US Department of Defense*

### III. Consideration of Model Legislation

1. “Gun Owners’ Privacy and Access to Health Care Act” – by Ms. Tara Mica, *National Rifle Association*  
**Bill withdrawn by sponsor.**
2. “Honesty in Purchasing Firearms Act” – by Ms. Tara Mica, *National Rifle Association*

This Act makes it a felony to knowingly deceive a licensed dealer of firearms in order to purchase or transfer firearms.

Motion to approve the model legislation; passed the public sector unanimously; passed the private sector; **Bill Passed.**

3. “Disposition of Firearms in State or Local Custody Act” –by Ms. Tara Mica, *National Rifle Association*

This Act requires firearms held in state or local custody to be auctioned off to licensed firearm dealers or manufacturers. In addition, they may destroy or dispose of firearms deemed unsafe for use.

Motion to approve the model legislation; passed the public sector unanimously; passed the private sector unanimously; **Bill Passed.**

4. “Asset Forfeiture Process and Private Property Protection Act” –by Mr. Lee McGrath, *Institute for Justice*

This model improves and expands upon ALEC’s “Comprehensive Asset Forfeiture Act” (2000). The “Asset Forfeiture Process and Private Property Protection Act” protects individual liberty and property rights by standardizing forfeitures across all crimes, simplifying procedures, and addressing counterproductive incentives in the law that distort policing priorities. Importantly, this model does not change the authority of law enforcement to seize property suspected of being associated with crime or limit in any way prosecutors’ ability to charge and prosecute suspected criminals. Moreover, it ensures that those individuals proven guilty of a crime do not keep the fruits of their crime. In doing so, it strikes the right balance between the individual property rights and public safety.

Motion to repeal existing “Comprehensive Asset Forfeiture Act”; failed the public sector; **Motion Failed.** Motion to table the “Asset Forfeiture and Private Property Protection Act”; passed the public sector; passed the private sector; **Bill Tabled.**

5. “Criminal Offense Justification Act” –by Representative B.J. Nikkel, CO

This Act requires justification for enacting new criminal offenses or making changes to existing criminal offenses. The Act would require new criminal laws to take into account the crime’s prevalence, relation to current laws, and similarity to existing offenses.

Motion to approve the model legislation as amended by inserting on line 48: “This analysis will include written documentation of all assumptions made.” after: “criminal offense, intends to address” and by inserting on line 53: “This analysis will include written documentation of all assumptions made.” after: “an analysis of how any costs associated with the legislative measure will be paid.” Motion to approve as amended; failed the public sector; **Motion to approve as amended failed.**

6. “Resolution in Support of Appropriate Disclosure Requirements” –by Mr. Sean Parnell, *Center for Competitive Politics*

This Resolution recognizes that disclosure requirements regarding contributions to candidates, political parties, and political action committees (PACs) should only apply to large, and not small, contributions. This Resolution also recognizes that disclosure requirements should not apply to trade and professional associations and nonprofit organizations that do not primarily attempt to influence elections.

Motion to approve the model resolution; failed the public sector;  
**Resolution Failed.**

7. “Principles of Legislative Transparency” – by Rep. Jerry Madden, *TX* and co-presented by Mr. Jason Mercier, *Washington Policy Center*

ALEC affirms that transparency and public disclosure in the legislative process is vital to a representative democracy. With one of the fundamental goals of public hearings being to respectfully hear from the public so that citizens are provided the opportunity to comment on proposed changes to state law, lawmakers should strive to provide adequate notice before public hearings or votes occur so that citizens are able to participate in the legislative process in a meaningful way.

Motion to approve the model principles; passed the public sector unanimously; passed the private sector unanimously; **Principles Passed.**

**IV. For the Good of the Order**

**V. Adjournment**



## MOTION

Mr. Ray Haynes, *National Popular Vote*, motions to repeal the **ALEC Resolution in Opposition to the National Popular Vote Interstate Compact (2007)** by striking the following:

### **Resolution in Opposition to the National Popular Vote Interstate Compact**

#### ***Summary***

This resolution calls on the State of (insert state) to oppose the plan popularly known as National Popular Vote. The National Popular Vote scheme threatens freedom, representation, and the identity of the United States as a confederation of distinct governing bodies who act according to the wishes of the majority of their citizens. The National Popular Vote scheme would undermine state authority and give some states power over the voice of others. It would render minority groups voiceless and empower densely populated and ideologically homogenous regions as well as radical fringe groups.

#### ***Model Resolution***

{Title, enacting clause, etc.}

**WHEREAS**, the plan known as National Popular Vote claims to create a national system for conducting presidential elections, yet fails to create national standards for ballot access; and

**WHEREAS**, the plan known as National Popular Vote claims to create a national system for conducting presidential elections, yet fails to create national standards for voter qualifications; and

**WHEREAS**, the plan known as National Popular Vote claims to create a national system for conducting presidential elections, yet fails to create national standards for requiring a recount of ballots within a state; and

**WHEREAS**, the plan known as National Popular Vote claims to create a national system for conducting presidential elections, yet fails to establish any rule to require a national recount where the national result is within a small margin even if the result in no individual state is within a margin that requires a recount in the state; and

**WHEREAS**, the plan known as National Popular Vote claims to create a national system for conducting presidential elections, yet fails to create national standards for recounting ballots; and

~~WHEREAS~~, the plan known as National Popular Vote claims to use an interstate compact rather than a constitutional amendment to enact a change that most Americans believe requires such an amendment and should at least be the subject of national discussion and deliberation; and

~~WHEREAS~~, the plan known as National Popular Vote has no majority requirement, but would allow a candidate with a plurality—however small—to become President.

~~THEREFORE, BE IT RESOLVED~~, that the State of (insert state) opposes the plan known as National Popular Vote or any other proposal to manipulate the Electoral College for the purpose of creating a national presidential vote through an interstate compact.

*Adopted by the Criminal Justice Task Force at the Annual Meeting, August 2007. Approved by the ALEC Board of Directors September 2007.*



## MOTION

Mr. Ray Haynes, *National Popular Vote*, motions to repeal the **ALEC Resolution in Support of the Electoral College (2007)** by striking the following:

### **Resolution in Support of the Electoral College**

#### **Summary**

~~This resolution calls on the State of (insert state) to recognize the current Electoral College system as the best way to elect the President of the United States. The current Electoral College system respects small states, rural areas, and the principle of federalism. Furthermore, this resolution calls on the State of (insert state) to defeat any multi-state compact legislation that would cause (insert state)'s electoral votes to be awarded based on the results of the national popular vote.~~

#### **Model Resolution**

{Title, enacting clause, etc.}

**WHEREAS**, the Founding Fathers rejected having the President of the United States elected by a national popular vote and instead chose the Electoral College system; and

**WHEREAS**, the current Electoral College system encourages presidential candidates to campaign in large metropolitan areas and also in rural areas and small states; and

**WHEREAS**, the current Electoral College system ensures that the winning Presidential candidate has support from multiple regions of the country; and

**WHEREAS**, the current Electoral College system respects the Founders' strong belief that individual states should have a vital role in electing the President of the United States; and

**WHEREAS**, the National Popular Vote Interstate Compact diminishes the importance of individual states in presidential elections; and

**WHEREAS**, the current Electoral College system respects the separation of and balance of power and authority between the States and the Federal government; and

**WHEREAS**, the current Electoral College system ensures that (insert state)'s electoral votes are awarded based on how the majority of the State's citizens vote;

~~WHEREAS~~, under the National Popular Vote Interstate Compact, (insert states)'s electoral votes could be awarded to a candidate that the majority of the State's citizens did not vote for; and

~~WHEREAS~~, the current Electoral College system is better suited to handle recounts because they happen at the state level, which is more manageable than if they were to happen at the national level as they might if the National Popular Vote Interstate Compact were adopted; and

~~WHEREAS~~, the current Electoral College system creates a needed balance between agrarian and industrial interests; and

~~WHEREAS~~, the current Electoral College system best preserves our two party system and prevents the fracture of America's political structure; and

~~WHEREAS~~, the United States Congress has rejected over 1000 amendments to the Constitution to change the Electoral College, including amendments to change to a popular vote system; and

~~WHEREAS~~, the constitutionality of the National Popular Vote Interstate Compact is questionable because Article I, Section 10 of the Constitution states that no state, without the consent of Congress, may "enter into any Agreement or Compact with another State."

**THEREFORE, BE IT RESOLVED** that the State of (insert state) endorses its current Electoral College system as the best way to elect the President of the United States.

**BE IT FURTHER RESOLVED** that the State of (insert state) shall defeat any legislation that creates a multi-state compact for the purpose of dismantling its current Electoral College System.

*Adopted by the Criminal Justice Task Force at the Annual Meeting, August 2007. Approved by  
the ALEC Board of Directors September 2007.*

1           **DRAFT Resolution In Support of the National Popular Vote Interstate**  
2           **Compact**

3  
4           ***Summary***

5  
6       This resolution calls on the State of [insert state] to support the interstate compact known as  
7       National Popular Vote Compact (the Compact). The Compact utilizes the authority granted to state  
8       legislatures under Article II, Section 1 of the Constitution to appoint Presidential electors "in such  
9       manner as the [State] Legislature...may direct..." and the power of states granted by the Supreme  
10      Court to enter into interstate compacts to direct state granted authority in concert with other states,  
11      to award Presidential electors to the winner of the popular vote in all 50 states and the District of  
12      Columbia. The Compact reaffirms the Electoral College, and the values of the Electoral College, by  
13      keeping control of elections in the purview of State Legislatures, and confirms the policy recognized  
14      by the majority of this country throughout most of its modern history, that every vote, in every state,  
15      should count equally in the election of the President of the United States.

16  
17           ***Model Resolution***

18  
19       **WHEREAS**, the interstate compact known as the National Popular Vote Compact recognizes the  
20       importance of the Electoral College, and state control of elections, without Congressional interference; and

21  
22       **WHEREAS**, the National Popular Vote Compact contains 880 words, and simply provides that a state  
23       will award the number of electors granted to that state by the Constitution of the United States to the  
24       winner of the popular vote in all 50 states, rather than winner of the vote in the member state, as the  
25       Presidential electors in the member state, preserving the state's control over its own elections in all  
26       respects, including voting powers, conditions of voting, recounts, registration, and verification; and

27  
28       **WHEREAS**, the National Popular Vote Compact insures that Presidential candidates will compete for  
29       the votes in every state throughout the United States, and not just the votes of the so-called "battleground"  
30       or "swing" states, so that the issues that affect the 35 "spectator states" are addressed as comprehensively  
31       by the Presidential candidates as the issues that affect the "swing states," and additionally insures that a  
32       Presidential candidates time, attention, and resources are devoted to capturing the votes in all 50 states, and  
33       not just the "swing states"; and

34  
35       **WHEREAS**, the National Popular Vote Compact brings the expectation of the voters that the  
36       Presidential candidate the obtains the most votes in a Presidential election (as is the case in every other  
37       election held in the United State), and does so by a means and a method allowed by the Constitution,  
38       without eliminating the Electoral College; and

39  
40       **WHEREAS**, the National Popular Vote Compact is an interstate compact rather than a  
41       constitutional amendment, it preserves the values of the Electoral College, and the plenary and  
42       exclusive power of the state legislatures to determine how the President of the United States  
43       should be elected, as clearly contemplated by James Madison in the Federalist number 45, and  
44       Alexander Hamilton in the Federalist number 68; and

45  
46       **WHEREAS**, the current system of awarding electors was not mandated by the Constitution, and  
47       in fact, not used by many states until years after the Constitution was adopted, and that a  
48       Constitutional Amendment to eliminate the Electoral College would necessarily undermine a key  
49       power delegated to the State Legislatures by the Constitution; and

50  
51       **WHEREAS**, the National Popular Vote Compact allows a state to withdraw from the Compact

52 any time up to 6 months before a presidential election if that state should ever decide that  
53 awarding its electors on the basis of the winner of the popular vote in all 50 states is not in that  
54 member state's best interest; and

55

56 **WHEREAS**, the National Popular Vote Compact combines the values of preserving the public's  
57 expectation that the winner of the most votes in any election should be the winner of that election  
58 with a strong commitment to the rights and powers of the various states, as contemplated by the  
59 Constitution;

60

61 **THEREFORE BE IT RESOLVED**, that the State of [insert state] supports the National  
62 Popular Vote Compact, and calls upon the various states to join with it by adopting the Compact.



## MOTION

Mr. Andrew Schauder and Mr. George Hittner, *American Traffic Solutions*, motions to repeal the **ALEC Anti-Automated Enforcement Act (2001)** by striking the following:

### **Anti-Automated Enforcement Act**

#### **Summary**

This Act prohibits the use of automated enforcement devices to detect violations of traffic regulations except in specified areas.

#### **Model Bill**

**Section 1. {Short Title}** This act may be cited as the “Anti-Automated Enforcement Act.”

**Section 2. To add to {enter appropriate section} of the {enter appropriate state code} to prohibit the use of “automated enforcement” by state or local law enforcement authorities.**

~~A. Automated enforcement devices may not be used by state and local law enforcement authorities to determine compliance with any traffic regulations including, but not limited to, official traffic control signals and speed limit restrictions, imposed by {enter appropriate sections} of this code or a local ordinance in conformity therewith except:~~

- ~~1. a) in school zones;~~
- ~~b) at railroad crossings; or~~
- ~~2. When a law enforcement officer is present with the automated enforcement equipment unit and citations are issued at the general time and place of the infraction.~~

~~B. For the purpose of this Act, “automated enforcement,” means a system operated by a state or local authority that uses a machine to automatically detect a violation of a traffic regulation and simultaneously record a photograph of the vehicle used in committing the violation, the operator of the vehicle or the license plate of the vehicle.~~

#### **Section 3. {Severability Clause}**

#### **Section 4. {Repealer Clause}**

#### **Section 5. {Effective Date}**

~~Adopted by ALEC's Criminal Justice Task Force at the Annual Meeting August 3, 2001. Approved by full ALEC Board of Directors September, 2001.~~

1

2       **Resolution in Support of the Use of Automated Enforcement Devices to Reduce**

3           **Injuries and Fatalities on our Nation's Road**

4           **To replace "ALEC Anti-Automated Enforcement Act" (2001)**

5       ***Summary***

6       Allows automated enforcement programs to be established by state legislatures as a means to provide  
7       enforcement in high risk locations or in situations when law enforcement manpower is unavailable.

9       ***Model Resolution***

11      **WHEREAS**, according to the National Highway Traffic Safety Administration (NHTSA) in 2009,  
12      more than 11,000 people were killed and hundreds of thousands injured in speed and red light running  
13      related crashes; and

15      **WHEREAS**, the National Highway Traffic Safety Administration estimates that the economic cost of  
16      speed-related crashes is \$40.4 billion each year, \$76,865 per minute or \$1,281 per second; and

18      **WHEREAS**, according to the Insurance Institute for Highway Safety (IIHS), red-light running is the  
19      leading cause of urban crashes and speed is a factor in about one-third of all fatal crashes; and

21      **WHEREAS**, a February 2011 study, IIHS estimated that red-light safety cameras saved 159 lives from  
22      2004-2008 in 14 of the largest U.S. cities where cameras were used. Up to 815 deaths could have been  
23      prevented had cameras been used in all large U.S. cities. Additionally, red light running fatalities were  
24      reduced by 24 percent in cities where cameras were deployed; and

26      **WHEREAS**, more people are injured in crashes involving red-light running than in any other type of  
27      crash. Red-light running crashes are estimated to cost the public upwards of \$14 billion annually; and

29      **WHEREAS**, nationally, more than 650 communities in more than 25 states and the District of  
30      Columbia employ the use of automated enforcement programs at intersections, in construction work  
31      zones to improve safety for transportation workers, and on school buses and in school zones to protect  
32      children; and

34      **WHEREAS**, public opinion surveys have shown that the vast majority of Americans support  
35      automated enforcement programs as reasonable means to enforce local traffic laws so as to allow  
36      police officers to patrol neighborhoods and fight violent criminals; and

38      **WHEREAS**, the National Research Council has recommended that states should enact enabling  
39      legislation allowing for automated enforcement to help ensure public safety where such legislation  
40      contains proper safeguards; and

1   **WHEREAS**, the states of Florida and Texas recently enacted enabling legislation providing local law  
2 enforcement and communities the option of establishing automated enforcement programs, defining  
3 for its use and citizen protections; and

4  
5   **WHEREAS**, the Sixth and Seventh Circuit Courts of Appeals have validated the use of automated  
6 enforcement programs, affirming their use as constitutional and holding that substantive due process  
7 depends on the existence of a fundamental liberty interest—and “no one has a fundamental right to run a  
8 red light or avoid being seen by a camera on a public street;” and

9  
10   **NOW, THEREFORE, BE IT RESOLVED**, that the American Legislative Exchange Council  
11 (ALEC), in promotion of public safety, supports the use of automated enforcement devices with  
12 appropriate safeguards to help reduce red light running and speed related injuries and fatalities in our  
13 cities and neighborhoods; and

14  
15   **BE IT FURTHER RESOLVED**, that ALEC supports safe, efficient and innovative solutions to  
16 public safety, including local governments’ ability to work in public-private partnership to enforce  
17 traffic laws; and

18  
19   **BE IT FURTHER RESOLVED**, that ALEC supports the establishment of automated enforcement  
20 programs not as revenue generators, but as a means to provide enforcement in high risk locations or in  
21 situations when law enforcement manpower is unavailable, difficult to utilize safely, or needed for  
22 other priorities; ensures personal responsibility by holding violators accountable for their actions; and  
23 preserves law-abiding citizens’ personal liberties from otherwise intrusive government; and

24  
25   **BE IT FURTHER RESOLVED**, that ALEC supports legislation that contains safeguards such as a  
26 required engineering and safety studies; standardization of signal timing, including appropriate yellow  
27 times as outlined by the Manual on Uniform Traffic Control Devices; public awareness and education,  
28 including appropriate signage when approaching intersections where camera systems are installed; law  
29 enforcement officer review and approval of each violation prior to issuance; and appropriate vendor  
30 flat rate and fee collection systems to ensure the primary use of the technology as a law enforcement  
31 force multiplier instead of as a revenue generating system.

## **DRAFT Resolution in Support of Evidence-based Medical Treatment for Substance Use Disorders**

### ***Summary***

State spending on corrections has grown faster than almost any other budget item in the past 20 years, reaching nearly \$50 billion dollars. Prison populations have risen dramatically and corrections costs have quadrupled. In addition, the burden of care for addiction and mental illness has shifted to jails and prisons. Scientific advances in understanding substance use disorders and in developing effective treatments have progressed dramatically in the past several years. Current policy has generated for drug and alcohol offenders a revolving door of arrest, incarceration, release to the streets untreated or undertreated, and then rearrest and return to incarceration, resulting in a costly, futile cycle. Evidence-based medical treatment should be made available as an option to reduce incarceration and recidivism.

### ***Model Resolution***

**WHEREAS**, the American Legislative Exchange Council (ALEC) is committed to developing effective criminal justice policies that create safe communities for citizens as well financially sustainable budgets; and

**WHEREAS**, state spending on corrections has grown faster than almost any other budget item over the past 20 years, reaching nearly \$50 billion dollars<sup>i</sup>; and the number of people in the criminal justice system has increased by more than 600% in the past 40 years<sup>ii</sup>; and

**WHEREAS**, more than 50% of inmates meet medical criteria for drug dependence or abuse<sup>iii</sup>; and

**WHEREAS**, adults on parole or supervised release (23%) from jail are nearly 3 times more likely to be dependent on or to abuse a substance than are their peers (8%)<sup>iv</sup>; and

**WHEREAS**, up to one-third of all heroin users pass through the criminal justice system annually<sup>v</sup>; and

**WHEREAS**, the criminal justice system is the largest source of referral to addiction treatment<sup>vi</sup>; and

**WHEREAS**, the use of addictive substances is problematic for the criminal justice system; and

**WHEREAS**, the overall criminal justice costs of opioid dependence is \$5.2 billion annually; and

**WHEREAS**, locking up millions of people for drug-related crimes has failed as a public safety strategy and has harmed public health.

**THEREFORE BE IT RESOLVED**, that ALEC supports policies and programs that partner correctional facilities and community health care providers; and

**THEREFORE BE IT FURTHER RESOLVED**, that ALEC supports non-addictive treatment plans, including non-narcotic medications, to decrease the costs associated with reincarceration

due to untreated addiction and mental illness, to improve public safety, and to medically treat offenders suffering from addiction or mental illness.

**THEREFORE BE IT FURTHER RESOLVED**, that ALEC supports non-addictive evidence-based medical treatment as an alternative to incarceration.

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<sup>i</sup> Josiah Rich, Sarah Wakeman, and Samuel Dickman. "Medicine and the Epidemic of Incarceration in the United States." *The New England Journal of Medicine*. 2 June 2011. Page 2. Print.

<sup>ii</sup> Josiah Rich, Sarah Wakeman, and Samuel Dickman. "Medicine and the Epidemic of Incarceration in the United States." *The New England Journal of Medicine*. 2 June 2011. Page 1. Print.

<sup>iii</sup> Josiah Rich, Sarah Wakeman, and Samuel Dickman. "Medicine and the Epidemic of Incarceration in the United States." *The New England Journal of Medicine*. 2 June 2011. Page 2. Print.

<sup>iv</sup> US Department of Health and Human Services, Substance Abuse and Mental Health Services Administration, Office of Applied Studies. "Results from the 2009 National Survey on Drug Use and Health: Volume 1. Summary of National Findings." Rockville, MD; HHS Publication 10-4586. 2010.

<sup>v</sup> Josiah Rich, Sarah Wakeman, and Samuel Dickman. "Medicine and the Epidemic of Incarceration in the United States." *The New England Journal of Medicine*. 2 June 2011. Page 2. Print.

<sup>vi</sup> US Department of Health and Human Services, Substance Abuse and Mental Health Service Administration, Office of Applied Studies. "Treatment Episode Data Set (TEDS): 1999-2009. *National Admissions to Substance Abuse Treatment Services*, DASIS Series: S-56, HHS Publication No. (SMA) 11-4646, Rockville, MD. 2011.



## MOTION

Mr. Lee McGrath, *Institute for Justice*, motions to repeal the **ALEC Comprehensive Asset Forfeiture Act (2000)** by striking the following:

### **Comprehensive Asset Forfeiture Act**

#### ***Summary***

~~Over the past two decades, federal, state, and local law enforcement agents have relied increasingly on asset forfeiture law “to take the profits out of crime.” Forfeiture has been an effective tool in the war on crime, but it has also led to corruption and abuse and to many innocent owners losing their property in the name of fighting crime. Those abuses have resulted in substantial media attention and have led many to take a closer look at this body of law, especially since its principles and practices are so foreign to the rule of law and the American system of justice.~~

~~Reforming ALEC’s existing model bill on asset forfeiture to include common sense protections that are vital to provide American citizens the protection that is guaranteed under our Constitution will help prevent future abuses of a system that law enforcement needs in its efforts to fight this country’s war on drugs.~~

#### ***Model Legislation***

##### **{Title, enacting clause, etc.}**

**Section 1. {Title.}** This Act may be cited as the Comprehensive Asset Forfeiture Act.

**Section 2. {Creation of General Rules Relating to Civil Forfeiture Proceedings.}**

(a)(1) In any nonjudicial civil forfeiture proceeding under a civil forfeiture statute, with respect to which the agency conducting a seizure of property must give written notice to interested parties, such notice shall be given as soon as practicable and in no case more than 60 days after the later of the date of the seizure or the date the identity of the interested party is first known or discovered by the agency, except that the court may extend the period for filing a notice for good cause shown.

(2) A person entitled to written notice in such proceeding to whom written notice is not given may on motion void the forfeiture with respect to that person's interest in the property, unless the agency shows—

- (i) good cause for the failure to give notice to that person; or
- (ii) that the person otherwise had actual notice of the seizure.

~~(3) If the Government does not provide notice of a seizure of property in accordance with subparagraph (a)(1), it shall return the property and may not take any further action to effect the forfeiture of such property.~~

~~(b)(1) Any person claiming property seized in a nonjudicial forfeiture proceeding may file a claim with the appropriate official after the seizure.~~

~~(2) A claim under subparagraph (a)(1) may not be filed later than 30 days after~~

- ~~(i) the date of final publication of notice of seizure; or~~
- ~~(ii) in the case of a person entitled to written notice, the date that notice is received.~~

~~(3) The claim shall state the claimant's interest in the property.~~

~~(4) Not later than 90 days after a claim has been filed, the Attorney General shall file a complaint for forfeiture in the appropriate court or return the property, except that a court in the district in which the complaint will be filed may extend the period for filing a complaint for good cause shown or upon agreement of the parties.~~

~~(5) If the Government does not file a complaint for forfeiture of property in accordance with subparagraph (b)(4), it shall return the property and may not take any further action to effect the forfeiture of such property.~~

~~(6) Any person may bring a claim under subparagraph (a)(1) without posting bond with respect to the property that is the subject of the claim.~~

~~(c)(1) In any case where the Government files in the appropriate State district court a complaint for forfeiture of property, any person claiming an interest in the seized property may file a claim asserting such person's interest in the property within 30 days of service of the Government's complaint or, where applicable, within 30 days of alternative publication notice.~~

~~(2) A person asserting an interest in seized property in accordance with subparagraph (a)(1) shall file an answer to the Government's complaint for forfeiture within 20 days of the filing of the claim.~~

~~(d)(1) If the person filing a claim is financially unable to obtain representation by counsel, the court may appoint counsel to represent that person with respect to the claim.~~

~~(2) In determining whether to appoint counsel to represent the person filing the claim, the court shall take into account such factors as—~~

- (i) the claimant's standing to contest the forfeiture; and
- (ii) whether the claim appears to be made in good faith or to be frivolous.

(3) The court shall set the compensation for that representation, which shall be equivalent to that provided for other court appointed representation under state law.

(e) In all suits or actions brought under any civil forfeiture statute for the civil forfeiture of any property, the burden of proof is on the State Government to establish, by clear and convincing evidence, that the property is subject to forfeiture.

(f)(1) An innocent owner's interest in property shall not be forfeited under any civil forfeiture statute.

(2) With respect to a property interest in existence at the time the illegal conduct giving rise to forfeiture took place, the term 'innocent owner' means an owner who—

- (i) did not know of the conduct giving rise to forfeiture; or
- (ii) upon learning of the conduct giving rise to the forfeiture, did all that reasonably could be expected under the circumstances to terminate such use of the property.

(3) With respect to a property interest acquired after the conduct giving rise to the forfeiture has taken place, the term 'innocent owner' means a person who, at the time that person acquired the interest in the property, was—

- (i)(I) a bona fide purchaser or seller for value (including a purchaser or seller of goods or services for value); or
- (II) a person who acquired an interest in property through probate or inheritance; and
- (ii) at the time of the purchase or acquisition reasonably without cause to believe that the property was subject to forfeiture.

(4) Where the property subject to forfeiture is real property, and the claimant uses the property as the claimant's primary residence and is the spouse or minor child of the person who committed the offense giving rise to the forfeiture, an otherwise valid innocent owner claim shall not be denied on the ground that the claimant acquired the interest in the property—

- (i) in the case of a spouse, through dissolution of marriage or by operation of law; or
- (ii) in the case of a minor child, as an inheritance upon the death of a parent, and not through a purchase. However, the claimant must establish, in accordance with subparagraph (e)(3), that at the time of the acquisition of the property interest, the claimant was reasonably without cause to believe that the property was subject to forfeiture.

(g) For the purposes of paragraph (f)—

(1) ways in which a person may show that such person did all that reasonably can be expected may include demonstrating that such person, to the extent permitted by law—

- (i) gave timely notice to an appropriate law enforcement agency of information that led the person to know the conduct giving rise to a forfeiture would occur or has occurred; and

- (ii) in a timely fashion revoked or attempted to revoke permission for those engaging in such conduct to use the property or took reasonable actions in consultation with a law enforcement agency to discourage or prevent the illegal use of the property; and

(2) in order to do all that can reasonably be expected, a person is not required to take steps that the person reasonably believes would be likely to subject any person (other than the person whose conduct gave rise to the forfeiture) to physical danger.

(h) As used in this subsection:

(1) The term 'civil forfeiture statute' means any provision of State law providing for the forfeiture of property other than as a sentence imposed upon conviction of a criminal offense.

(2) The term 'owner' means a person with an ownership interest in the specific property sought to be forfeited, including a leasehold, lien, mortgage, recorded security device, or valid assignment of an ownership interest. Such term does not include—

- (i) a person with only a general unsecured interest in, or claim against, the property or estate of another;

- (ii) a bailee unless the bailor is identified and the bailee shows a colorable legitimate interest in the property seized; or

~~(iii) a nominee who exercises no dominion or control over the property.~~

~~(i)(1) A claimant under subsection (h) is entitled to immediate release of seized property if—~~

~~(i) the claimant has a possessory interest in the property;~~

~~(ii) the continued possession by the State Government pending the final disposition of forfeiture proceedings will cause substantial hardship to the claimant, such as preventing the functioning of a business, preventing an individual from working, or leaving an individual homeless; and~~

~~(iii) the claimant's likely hardship from the continued possession by the State Government of the seized property outweighs the risk that the property will be destroyed, damaged, lost, concealed, or transferred if it is returned to the claimant during the pendency of the proceeding.~~

~~(2) A claimant seeking release of property under this subsection must request possession of the property from the appropriate official, and the request must set forth the basis on which the requirements of paragraph (i)(1) are met.~~

~~(3) If within 10 days after the date of the request the property has not been released, the claimant may file a motion or complaint in any district court that would have jurisdiction of forfeiture proceedings relating to the property setting forth—~~

~~(i) the basis on which the requirements of paragraph (i)(1) are met; and~~

~~(ii) the steps the claimant has taken to secure release of the property from the appropriate official.~~

~~(4) If a motion or complaint is filed under paragraph (i)(3), the district court shall order that the property be returned to the claimant, pending completion of proceedings by the State Government to obtain forfeiture of the property, if the claimant shows that the requirements of paragraph (i)(1) have been met. The court may place such conditions on release of the property as it finds are appropriate to preserve the availability of the property or its equivalent for forfeiture.~~

~~(5) The district court shall render a decision on a motion or complaint filed under paragraph (i)(3) no later than 30 days after the date of the filing, unless such 30-day limitation is extended by consent of the parties or by the court for good cause shown.~~

### **Section 3. {Compensation for Damage to Seized Property.}**

(a) The State shall be liable for real costs of any claim based on the destruction, injury, or loss of goods, merchandise, or other property, while in the possession of any officer of [customs or] excise or any other law enforcement officer, if the property was seized for the purpose of forfeiture under any provision of State law providing for the forfeiture of property other than as a sentence imposed upon conviction of a criminal offense but the interest of the claimant is not forfeited".

(b) The Attorney General may settle, for not more than \$50,000 in any case, a claim for damage to, or loss of, privately owned property caused by an investigative or law enforcement officer who is employed by the State and acting within the scope of his or her employment.

(2) ~~LIMITATIONS~~ The Attorney General may not pay a claim under paragraph (1) that-

- (A) is presented to the Attorney General more than 1 year after it occurs; or
- (B) is presented by an officer or employee of the United States Government and arose within the scope of employment.

#### **Section 4. {Pre-Judgment and Post-Judgment Interest.}**

(a) ~~INTEREST~~

(1) ~~POST JUDGMENT~~ Upon entry of judgment for the claimant in any proceeding to condemn or forfeit property seized or arrested under any provision of State law providing for the forfeiture of property other than as a sentence imposed upon conviction of a criminal offense, the State shall be liable for post-judgment interest as would have been earned in accordance with current interest rates.

(2) ~~PRE JUDGMENT~~ The State shall not be liable for pre-judgment interest in a proceeding under any provision of State law providing for the forfeiture of property other than as a sentence imposed upon conviction of a criminal offense, except that in cases involving currency, other negotiable instruments, or the proceeds of an interlocutory sale, the State shall disgorge to the claimant any funds representing—

- (i) interest actually paid to the State from the date of seizure or arrest of the property that resulted from the investment of the property in an interest bearing account or instrument; and

~~(ii) for any period during which no interest is actually paid, an imputed amount of interest that such currency, instruments, or proceeds would have earned in accordance with the current interest rate.~~

~~(3) LIMITATION ON OTHER PAYMENTS~~ The State shall not be required to disgorge the value of any intangible benefits in a proceeding under any provision of State law providing for the forfeiture of property other than as a sentence imposed upon conviction of a criminal offense nor make any other payments to the claimant not specifically authorized by this subsection.'

**Section 5. {Forfeiture of Property for Commission of Criminal Offense—Procedure Disposition.}**

~~(a) Money, real property, vehicles and other conveyances, or tangible and intangible personal property of any kind that is used in connection with the commission of a criminal offense provided for in the {name of state} statutes is not subject to forfeiture unless it is owned by a person convicted of a criminal offense, it is ordered forfeited as part of the sentence imposed upon conviction, and a section of {name of state} law specifically provides for forfeiture as part of the sentence imposed upon conviction. A civil forfeiture proceeding may not be used to proceed against property suspected of being used in connection with the commission of a criminal offense.~~

~~(b) Unless another section of {name of state} statute specifically provides a procedure for disposition of property forfeited as part of the sentence imposed upon conviction of a criminal offense specified in that section, the forfeited property must be disposed of as provided in this section.~~

~~(c) The sheriff shall seize the forfeited property within ten (10) days after the conviction.~~

~~(d) Forfeiture of property encumbered by a security interest is subject to the secured person's interest if the secured person did not know and could not have reasonably known of the unlawful possession, use, or other act in connection with the commission of the crime.~~

~~(e) If proper proof of a security interest is presented to the sheriff, the sheriff shall release the property to the secured person if the amount due to the person is equal to or greater than the value of the property.~~

~~(f) Property not released to a secured person under subsection (e) must, except as provided in subsection (g), be sold by the sheriff at a public auction in the same manner as provided by law for the sale of property under execution. The property may not be sold to an officer or employee of a law enforcement agency. The proceeds of the sale must be distributed first to a secured person who has presented proper proof of the security~~

~~interest to the sheriff, and any remaining proceeds must be used to [insert appropriate action].~~

~~(g) Property that is unlawful to produce or possess must be destroyed by the sheriff if it cannot be sold to a person or entity that can lawfully possess it.~~

#### **Section 6. {Applicability.}**

~~(a) IN GENERAL Unless otherwise specified in this Act, this Act will apply with respect to claims, suits, and actions filed on or after the date of the enactment of this Act.~~

#### **(b) EXCEPTIONS-**

~~(1) The standard for the required burden of proof set forth in section 2, shall apply in cases pending on the date of the enactment of this Act.~~

~~(2) The amendment made by section 4 shall apply to any judgment entered after the date of the enactment of this Act.~~

#### **Section 7. {Severability Clause}**

#### **Section 8. {Repealer Clause}**

*Adopted by ALEC's Criminal Justice Task Force at the States and Nation Policy Summit  
December 9, 1999. Approved by full ALEC Board of Directors January, 2000.*

DRAFT

## **Asset Forfeiture Process and Private Property Protection Act**

To replace “ALEC Comprehensive Asset Forfeiture Act” (2000)

## *Summary*

Civil forfeiture laws represent one of the most serious assaults on private property rights in the nation today. Under civil forfeiture, police and prosecutors can seize your car or other property, sell it and use the proceeds to fund agency budgets—often without so much as charging you with a crime. This model improves and expands upon ALEC’s “Comprehensive Asset Forfeiture Act” (2000). The “Asset Forfeiture Process and Private Property Protection Act” protects individual liberty and property rights by standardizing forfeitures across all crimes, simplifying procedures, and addressing counterproductive incentives in the law that distort policing priorities. Importantly, this model does not change the authority of law enforcement to seize property suspected of being associated with crime or limit in any way prosecutors’ ability to charge and prosecute suspected criminals. Moreover, it ensures that those individuals proven guilty of a crime do not keep the fruits of their crime. In doing so, it strikes the right balance between the individual property rights and public safety.

## ***Model Legislation***

## Section 1. {Title}

This act may be cited as the “Asset Forfeiture Process and Private Property Protection Act”

**Section 2. {Definitions}** As used in this Act:

(A) "Contraband" means goods that are unlawful to import, export or possess.

(B) "Conveyance" means a device used for transportation and includes a motor vehicle, trailer, snowmobile, airplane, and vessel and any equipment attached to it. The term does not include property that is stolen or taken in violation of the law.

(C) "Instrumentality" means property otherwise lawful to possess that is used in an offense. An "instrumentality" includes a tool, a firearm, a conveyance, a computer, computer software, a telecommunications device, money, and other means of exchange.

(D) A “law subject to forfeiture” is a State law that carries a felony penalty and that explicitly includes forfeiture as a punishment or sanction for the offense.

### **Section 3. {Legislative Intent}.**

(A) This Act intends to:

(1) deter criminal activity by reducing its economic incentives;

- 48  
49       (2) increase the pecuniary loss from criminal activity; and  
50  
51       (3) protect against the wrongful forfeiture of property.

52       **Section 4. {Exclusivity}**

53       (A) This Act sets out the exclusive process governing forfeitures in the state of {insert  
54       state} and supersedes any conflicting provisions in law.

55       **Section 5. {Criminal Asset Forfeiture}**

56       (A) When a person is convicted of violating a law subject to forfeiture, the court,  
57       consistent with this Act, shall order the person to forfeit:

- 58           (1) proceeds and property the person derived directly from the commission of  
59           the crime;  
60           (2) proceeds and property directly traceable to proceeds and property derived  
61           directly from the commission of the crime; and  
62           (3) instrumentalities the person used in the commission of the crime.

63       **Section 6. {Conviction Required; Standard of Proof}**

64       (A) Property used in or derived from the violation of a law is subject to forfeiture only if  
65           (1) the violation is of a law subject to forfeiture and  
66           (2) the violation is established by proof of a criminal conviction.

67       (b) The State shall establish that seized property is forfeitable under section (5) by clear  
68       and convincing evidence.

69       **Section 7. {No Civil Asset Forfeiture}**

70       (A) There is no civil asset forfeiture.

71       **Section 8. {Rule of lenity}**

72       (A) The court shall resolve any ambiguity in this chapter relating to the State taking  
73       property through asset forfeiture in favor of the property owner.

74       **Section 9. {Court-appointed Counsel}**

75       (A) If a court determines that a person opposing forfeiture is financially unable to obtain  
76       representation by counsel, the court, at the request of the person, shall insure that the

95 person is represented by an attorney at the State's expense. The attorney shall submit a  
96 statement of reasonable fees and costs to the court in a manner directed by the court.  
97

98 **Section 10. {Authorization to Use Forfeiture}**

100 (A) Except for federal forfeitures consistent with section 39, forfeiture may occur only  
101 pursuant to an explicit grant of authority in State law. An ordinance enacted by a county,  
102 municipality, or other unit of government authorizing forfeiture is not valid.  
103

104 (B) A prosecutor having jurisdiction over a law subject to forfeiture has authority to  
105 pursue forfeiture.  
106

107 **Section 11. {Property Subject to Forfeiture; Contraband}**

109 (A) Property subject to forfeiture is limited to:  
110

111 (1) land, buildings, containers, conveyances, equipment, materials, products,  
112 money, securities, and negotiable instruments; and  
113

114 (2) ammunition, firearms, and ammunition-and-firearm accessories found on  
115 or in proximity to a person who violated a law subject to forfeiture or in a  
116 conveyance used to violate a law subject to forfeiture.  
117

118 (B) No property right exists in contraband, including scheduled drugs without a valid  
119 prescription. Contraband is subject to seizure and must be disposed of according to State  
120 law. Contraband is not subject to forfeiture under this chapter.  
121

122 **Section 12. {Substitution of Assets for Unreachable Property}**

124 (A) Upon the State's motion following conviction, the court may order the forfeiture of  
125 substitute property owned fully by the defendant up to the value of unreachable property  
126 only if the State proves by a preponderance of the evidence that the defendant  
127 intentionally transferred, sold, or deposited property with a third party to avoid the  
128 court's jurisdiction.  
129

130 **Section 13. {No Additional Remedies}**

132 (A) Except as otherwise provided in this chapter, the State may not seek additional  
133 remedies including but not limited to personal money judgments.  
134

135 **Section 14. {No Joint-and-Several Liability; Pro Rata Forfeitures}**

137 (A) A defendant is not jointly and severally liable for forfeiture awards owed by other  
138 defendants.  
139

140 (B) When ownership is unclear, a court may order each defendant to forfeit property on a  
141 pro rata basis proportional to the proceeds that each defendant personally received.

## PROCESS

## **Section 15. {Designating Property Subject to Forfeiture}**

(A) Property subject to forfeiture must be identified by the State in an indictment of a grand jury or by information in the court in any related criminal proceeding in which a person with an interest in the property has been simultaneously charged with a violation of a law subject to forfeiture.

(B) The indictment or information must specify the time and place of the violation, identify the property, and particularly describe its use in the commission of the crime or derivation from the commission of the crime.

(C) At any time prior to trial, the State, with the consent of the court and any defendant with an interest in the property, may file an ancillary charge alleging that property is subject to forfeiture.

## **Section 16. {Seizure with Process}**

(A) At the request of the State, a court may issue an ex parte preliminary order to seize or secure property for which forfeiture is sought and to provide for its custody. Application, issuance, execution, and return are subject to State law.

## **Section 17. {Seizure without Process}**

(A) Property subject to forfeiture may be seized without a court order if:

(1) the seizure is incident to a lawful arrest or a lawful search;

(2) the property subject to seizure has been the subject of a prior judgment in favor of the State; or

(3) the State has probable cause to believe that the delay occasioned by the necessity to obtain process would result in the removal or destruction of the property and that the property is forfeitable under section 5.

## Section 18. {Receipt for Seized Property}

(A) When property is seized, the law enforcement officer shall give an itemized receipt to the person in possession of the property; or in the absence of any person, leave a receipt in the place where the property was found, if reasonably possible.

## Section 19. {Bill of Particulars}

187 (A) A motion for a bill of particulars may be made before arraignment, within 90 days  
188 after arraignment, or at any later time that the court permits. A bill of particulars may be  
189 amended at any time subject to conditions that justice requires.

190

191 **Section 20. {Title}**

192

193 (A) At the time of seizure or entry of a restraining order, the State acquires provisional  
194 title to the seized property. Provisional title authorizes the State to hold and protect the  
195 property.

196

197 (B) Title to the property vests with the State when the trier of fact renders a final  
198 forfeiture verdict and relates back to the time when the State acquired provisional title.  
199 However, this title is subject to claims by third parties adjudicated under this chapter.

200

201 **Section 21. {Storage}**

202

203 (A) When property is seized, the State shall use reasonable diligence to secure the  
204 property and prevent waste.

205

206 **Section 22. {Records}**

207

208 (A) A State entity having custody of seized property that is subject to forfeiture shall  
209 maintain the following records:

210

- 211 (1) the exact kinds, quantities, and forms of the property;

212

- 213 (2) the date and from whom it received the property;

214

- 215 (3) the violation of law that subjected the property to seizure;

216

- 217 (4) the liens against the seized property;

218

- 219 (5) the make, model, and serial number of each seized firearm;

220

- 221 (6) to whom and when the notice of forfeiture was given;

222

- 223 (7) to whom it delivered the property; and

224

- 225 (8) the date and manner of destruction or disposition of the property.

226

227

(B) The records required under paragraph (A) are subject to the State's freedom of  
information act.

229

230 **Section 23. {Bond by Owner for Possession}**

231

232 (A) If the owner of property that has been seized seeks its possession before the criminal  
233 trial, the owner may post bond or give substitute property in an amount equal to the fair

234 market value of the seized property at the time the bond amount is determined.  
235

236 (B) On the posting of bond or the giving of substitute property, the State shall return the  
237 seized property to the owner within a reasonable period of time not to exceed 3 business  
238 days. The forfeiture action may then proceed against the bond or substitute property as if  
239 it were the seized property.

240  
241 (C) This section does not apply to property reasonably held for investigatory purposes.  
242

#### 243 **Section 24. {Petition for Remission or Mitigation}**

244  
245 (A) Prior to the entry of a court's order disposing of the forfeiture action, any person who  
246 has an interest in seized property may file with the state's attorney general a petition for  
247 remission or mitigation of the forfeiture. The attorney general shall remit or mitigate the  
248 forfeiture upon terms and conditions the attorney general deems reasonable if the attorney  
249 general finds that:

250  
251 (1) the petitioner did not intend to violate the law or

252  
253 (2) extenuating circumstances justify the remission or mitigation of the  
254 forfeiture.

#### 255 **Section 25. {Pretrial Replevin Hearing}**

256  
257 (A) Following the seizure of property under this chapter, a defendant or third-party has a  
258 right to a pretrial hearing to determine the validity of the seizure.

259  
260 (B) The claimant may claim at any time prior to 60 days before trial of the related  
261 criminal violation the right to possession of property by motion to the court to issue a writ  
262 of replevin.

263  
264 (C) The claimant shall file a motion establishing the validity of the alleged right, title, or  
265 interest in the property.

266  
267 (D) The court shall hear the motion no more than 30 days after the motion is filed.

268  
269 (E) The State shall file an answer showing probable cause for the seizure, or cross-  
270 motions at least 10 days before the hearing.

271  
272 (F) The court shall grant the motion if it finds that (1) it is likely the final judgment will  
273 be that the State must return the property to the claimant or (2) the property is the only  
274 reasonable means for a defendant to pay for legal representation in the forfeiture or  
275 criminal proceeding.

276  
277 (G) In lieu of ordering the issuance of the writ, the court may order the State to give  
278 security for satisfaction of any judgment, including damages, that may be rendered in the  
279 action, or order other relief as may be just.

- 281
- 282     **Section 26. {Discovery}**
- 283
- 284     (A) Discovery is subject to the rules of criminal procedure.
- 285
- 286     **Section 27. {Right to Trial by Jury}**
- 287
- 288     (A) Any party to a forfeiture action has a right to trial by jury.
- 289
- 290     **Section 28. {Trial Proceedings}**
- 291
- 292     (A) A trial related to the forfeiture of property must be held in a single proceeding  
293 together with the trial of the related alleged crime unless the defendant moves to bifurcate  
294 the trial.
- 295
- 296     (B) The court, upon motion of a defendant, shall separate the trial of the criminal matter  
297 against the defendant from the matter related to the forfeiture of property.
- 298
- 299     (C) The court, upon motion of a defendant, shall allow a defendant to waive the right to  
300 trial by jury related to the forfeiture of property while preserving the right to trial by jury  
301 of any crime alleged.
- 302
- 303     (D) If the court bifurcates the jury trial, the court shall first instruct and submit to the jury  
304 the issue of the guilt or innocence of the defendant to be determined by proof beyond a  
305 reasonable doubt and shall restrict argument of counsel to those issues.
- 306
- 307     (E) If the court bifurcates the jury trial, each party may introduce evidence in the  
308 forfeiture phase that was not introduced in the criminal phase.
- 309
- 310     (F) If the jury finds a defendant guilty of the related criminal offense and the defendant  
311 did not waive the right to trial by jury related to the forfeiture, the court shall instruct and  
312 submit to the jury the issue of the forfeiture. The court may use interrogatories to address  
313 the forfeiture issue.
- 314
- 315     **Section 29. {Proportionality}**
- 316
- 317     (A) Following determination by the trier of fact, the owner may petition the court to  
318 determine whether the forfeiture is unconstitutionally excessive under the State or U.S.  
319 constitution.
- 320
- 321     (B) The owner has the burden of establishing that the forfeiture is grossly disproportional  
322 to the seriousness of the offense by a preponderance of the evidence at a hearing  
323 conducted by the court without a jury.
- 324
- 325     (C) In determining whether the forfeiture of an instrumentality is constitutionally  
326 excessive, the court shall consider all relevant factors, including, but not limited to:
- 327

- 328 (1) the seriousness of the offense and its impact on the community, including  
329 the duration of the activity and the harm caused by the person whose property  
330 is subject to forfeiture;  
331
- 332 (2) the extent to which the person whose property is subject to forfeiture  
333 participated in the offense;  
334
- 335 (3) the extent to which the property was used in committing the offense;  
336
- 337 (4) the sentence imposed for committing the crime subject to forfeiture; and  
338
- 339 (5) whether the offense was completed or attempted.  
340

341 (D) In determining the value of the instrumentality subject to forfeiture, the court shall  
342 consider relevant factors, including, but not limited to:

- 343
- 344 (1) the fair market value of the property;  
345
- 346 (2) the value of the property to the person whose property is subject to  
347 forfeiture including hardship to the owner if the forfeiture is realized; and  
348
- 349 (3) the hardship from the loss of a motor vehicle or other property to family  
350 members or others if the property is forfeited assets.

351

352 (e) The court may not consider the value of the instrumentality to the State in determining  
353 whether the forfeiture of an instrumentality is constitutionally excessive.

### 354                   **THIRD-PARTY INTERESTS**

#### 355                   **Section 30. {Secured Interest}**

356

359 (A) A bona fide security interest is not subject to forfeiture unless the person claiming a  
360 security interest had actual knowledge that the property was subject to forfeiture at the  
361 time of the property was seized or restrained under this chapter.

362

363 (B) A person claiming a security interest bears the burden of establishing that the validity  
364 of the interest by a preponderance of the evidence.

#### 365                   **Section 31. {Ancillary Hearing of Third-Party Interests}**

366

368 (A) A person not charged in the indictment or information but who has an interest in  
369 property subject to forfeiture may not intervene after the criminal trial has begun.

370

371 (B) Following the entry of a verdict of forfeiture of property pursuant to this chapter or  
372 the entry of a guilty plea in court on the record, the State shall exercise reasonable  
373 diligence to identify persons with a potential interest in the property and make reasonable  
374 efforts to give notice to potential claimants. The State shall provide written notice of its

375 intent to dispose of the property to any person known or alleged to have an interest in the  
376 property exempted from forfeiture under this chapter, including any person potentially  
377 making claims for

378                     (1) court-ordered child support,  
379

380                     (2) employment-related compensation or

381                     (3) payment of unsecured debts. The notice must also be made by publication in a  
382 reasonable geographic area.

383 (C) A person other than the defendant asserting a legal interest in the property, within 60  
384 days of the date of the notice, may petition the court for a hearing to adjudicate the  
385 validity of the alleged interest in the property. The request for the hearing must be signed  
386 by the petitioner under penalty of perjury and state the nature and extent of the  
387 petitioner's right, title, or interest in the property; the time and circumstances of the  
388 petitioner's acquisition of the right, title, or interest; and any additional facts supporting  
389 the petitioner's claim and the relief sought.

390 (D) Upon the filing of a petition, the court shall schedule the hearing as soon as  
391 practicable but in no event later than 6 months after the sentencing of any defendant  
392 convicted upon the same indictment. The court shall issue or amend a final order of  
393 forfeiture in accordance with its determination if, after the hearing, the court determines  
394 that:

395                     (1) the petitioner has a legal right, title, or interest in the property, and such right,  
396 title or interest renders the order of forfeiture invalid in whole or in part because  
397 the right, title or interest was vested in the petitioner rather than the defendant or was  
398 superior to any right, title or interest of the defendant at the time of the property  
399 was seized or restrained under this chapter; or

400                     (2) the petitioner is a bona fide purchaser for value of the right, title, or interest in  
401 the property and was at the time of purchase without cause to believe that the  
402 property was subject to forfeiture under this chapter. The State has the burden of  
403 proof with respect to the issue of whether the petitioner was without cause to  
404 believe that the property was subject to forfeiture at the time of purchase or other  
405 acquisition of value.

406 (E) A qualified indigent who wishes to contest the forfeiture of property and appears to  
407 have an exempt interest has a right to court-appointed counsel as provided in section 9. In  
408 addition, the court shall waive the person's court fees.

409                     **Section 32. {Innocent Partial or Joint Owner}**

410 (A) The property of an innocent partial or joint owner may not be forfeited under any  
411 forfeiture statute. The process for determining whether a person is an innocent partial or  
412 joint owner is set out in this section.

- 422
- 423 (B) A person who has any form of partial or joint interest, including joint tenancy,  
424 tenancy in common, or tenancy by the entirety, in property subject to forfeiture existing  
425 at the time the illegal conduct giving rise to forfeiture occurred and who claims to be an  
426 innocent partial or joint owner shall make a prima facie case that the person has a legal  
427 right, title, or interest in the property seized or restrained under this chapter.
- 428
- 429 (C) If paragraph (B) is satisfied and the State seeks to proceed with the forfeiture against  
430 the person's ownership interest, the State shall prove by a preponderance of the evidence  
431 that the person had actual knowledge of the underlying crime giving rise to the forfeiture  
432 or was willfully blind to its commission.
- 433
- 434 (D) If paragraph (C) is satisfied and the person seeks to establish the person's innocent  
435 owner status, the person shall show by a preponderance of the evidence that the person  
436 did all that reasonably could be expected under the circumstances to prohibit, abate, or  
437 terminate the illegal use of the property. The person may show that the person did all that  
438 reasonably could be expected by demonstrating, among other things, that the person, to  
439 the extent permitted by law:
- 440
- 441 (1) gave timely notice to an appropriate law enforcement agency of information  
442 that led the person to know the conduct giving rise to a forfeiture would occur or  
443 had occurred; or
- 444
- 445 (2) in a timely fashion revoked or made a good-faith attempt to revoke permission  
446 for those engaging in the illegal conduct to use the property or took reasonable  
447 actions in consultation with a law enforcement agency to discourage or prevent  
448 the illegal use of the property.
- 449
- 450 (3) A person is not required under this paragraph to take steps that the person  
451 reasonably believes would be likely to subject the person to physical danger.
- 452
- 453 (E) If paragraph (D) is satisfied, the court shall find that the claimant was not a party to  
454 the crime and is an innocent partial or joint owner.
- 455
- 456 (F) A person who acquired an ownership interest in property after the commission of a  
457 crime giving rise to the forfeiture has occurred and who claims to be an innocent partial  
458 or joint owner, shall make a prima facie case that the person legal right, title, or interest in  
459 the property seized or restrained under this chapter.
- 460
- 461 (G) If paragraph (F) is satisfied and the State seeks to proceed with the forfeiture against  
462 the person's ownership interest, the State shall prove by a preponderance of the evidence  
463 that at the time the person acquired the property interest the person had actual knowledge  
464 that the property was subject to forfeiture or was willfully blind to the commission of the  
465 crime that subjected the property to forfeiture.
- 466
- 467 (H) If the State fails to meet its burden in paragraph (G), the court shall find that the  
468 person was not a party to the crime and is an innocent partial or joint owner.

469

470 (I) An otherwise valid claim under paragraph (F) may not be denied on the grounds that  
471 the person gave nothing of value in exchange for the property if:

472

473 (1) the property is the person's primary residence;

474

(2) depriving the person of the property would deprive the person of the means to maintain reasonable shelter in the community for the person and all dependents residing with the person;

478

481

482 (4) the person acquired interest in the property through marriage, divorce, or legal  
483 separation, or the person was the spouse or legal dependent of someone whose  
484 death resulted in the transfer of the property to the person through inheritance or  
485 probate, except that the court shall limit the value of any real property interest for  
486 which innocent ownership is recognized under this paragraph to the value  
487 necessary to maintain reasonable shelter in the community for the person and all  
488 dependents residing with the person.

489

490 (J) If the innocent joint or partial owner's claim is established under this section, the State  
491 shall relinquish all claims of title to the property that may have vested with it.

492

493 (K) If the court determines that an innocent joint or partial owner has any form of partial  
494 or joint interest in a conveyance subject to forfeiture related to operating a conveyance  
495 while impaired, the court may order that the innocent joint or partial owner participate in  
496 the ignition interlock device program under State law as a condition of ordering the  
497 device be returned to the innocent owner.

498

499 (L) If the court determines that an innocent joint or partial owner has any form of partial  
500 or joint interest in property, other than property described in paragraph (K), the court  
501 shall enter an appropriate order reflecting the innocent owner's preference for:

502

503 (1) severing the property;

504

505 (2) transferring the property to the State with a provision that the State  
506 compensate the innocent owner to the extent of the owner's ownership interest  
507 once a final order of forfeiture has been entered and the property has been reduced  
508 to liquid assets; or

509

510 (3) permitting the innocent owner to retain the property subject to a lien in favor  
511 of the State to the extent of the forfeitable interest in the property.

512

## POSTFORFEITURE

### **515 Section 33. {Sale of Property}**

- 516  
517     (A) If a trier of fact finds that property is to be forfeited, the court shall order the State to:  
518  
519         (1) return stolen property to its owner;  
520  
521         (2) sell all other firearms, ammunition and firearm accessories to licensed  
522                 firearms dealers in a commercially reasonable manner; and  
523  
524         (3) sell other property in a commercially reasonable manner.  
525

526     **Section 34. {Prohibition on Retaining Property; Sale Restrictions}**  
527

528     (A) The law enforcement agency that seized property forfeited under this chapter may not  
529         retain it for its own use or sell it directly or indirectly to any employee of the agency, to a  
530         person related to an employee by blood or marriage, or to another law enforcement  
531         agency.

532     **Section 35. {Disposition of Proceeds}**  
533

534     (A) Proceeds seized and proceeds from the sale of forfeited assets may be distributed  
535         only following a court order. The court shall order the funds be used to pay, in order of  
536         priority, for the following purposes:

- 537  
538         (1) storage and sale expenses;  
539  
540         (2) satisfaction of valid liens against the property;  
541  
542         (3) restitution ordered to the victim of the criminal offense;  
543  
544         (4) reimbursement of investigation costs excluding salaries that the law  
545                 enforcement agency incurred in the seizure of the assets subject to the  
546                 forfeiture action;  
547  
548         (5) court-ordered child support obligations;  
549  
550         (6) claims for compensation by the defendant's employees; and  
551  
552         (7) claims for compensation by defendant's unsecured creditors.

553  
554     (B) All remaining funds must be deposited into the State's treasury and credited to the  
555         general fund.

556     **Section 36. {Reporting}**  
557

558     (A) For each forfeiture action occurring in the State regardless of the authority for it, the  
559         participating law enforcement agency and prosecutor shall provide a written record of the  
560         forfeiture incident to the State reporting agency.

563  
564 (B) The record must include the amount forfeited, the underlying crime or conduct, its  
565 date, and whether the property had a lien against it. The record must also list the number  
566 of firearms forfeited and the make, model, and serial number of each firearm forfeited.  
567 The record must indicate how the property was disposed.

568  
569 (C) The law enforcement agency and the prosecutor shall report to the State reporting  
570 agency all instances in which property seized for forfeiture is returned to its owner either  
571 because forfeiture is not pursued or for any other reason.

572  
573 (D) For forfeitures resulting from the activities of multi-jurisdictional law enforcement  
574 entities, each entity on its own behalf shall report the information required in this section.

575  
576 (E) The State reporting agency may require information not specified in this section to be  
577 reported as well.

578  
579 (F) Reports must be made on a monthly basis in a manner prescribed by the State  
580 reporting agency.

581  
582 (G) The State reporting agency shall report annually to the legislature and the public on  
583 the nature and extent of forfeitures.

584  
585 (H) The State reporting agency shall include in its report required under paragraph (G)  
586 recommended changes to forfeiture law to better ensure that forfeiture proceedings are  
587 handled in a manner that is fair to innocent property owners, secured interest holders,  
588 citizens, and taxpayers.

589  
590 (I) The State reporting agency shall include in its report required under paragraph (G)  
591 information on law enforcement agencies and prosecutorial offices not in compliance  
592 with this section and shall order the State to withhold payment of any funds to those  
593 agencies and offices until compliance is achieved.

## MISCELLANEOUS PROVISIONS

## **Section 37. {Disposing of Property of a Person Deported}**

599 (A) This section covers procedures for disposing of property when the owner is deported  
600 from the United States to a foreign country.

601

602 (B) If the owner of property is deported after

603 (1) being convicted of a violation of a state law that is subject to forfeiture and

604

605 (2) the property is found to be an instrumentality or proceeds of the violation of

606 that state law, the court shall enter an order disposing of the property in

607 accordance with sections 33, 34, and 35.

608

609 (C) If the owner of property is deported but

- 610                     (1) the owner is not convicted of violating a state law that is subject to forfeiture  
611                     or  
612  
613                     (2) the property is not found to be an instrumentality or proceeds from the  
614                     violation of a state law subject to forfeiture for which the owner of the property is  
615                     convicted, the property shall be returned to the next of kin of the person deported.  
616  
617                     (D) If the next of kin is not known or refuses the property, the State shall exercise  
618                     reasonable diligence to identify persons with a potential interest in the property and make  
619                     reasonable efforts to give notice to potential claimants. The State shall provide written  
620                     notice to persons known or alleged to have an interest in the property including other  
621                     family members and any person potentially making claims for court-ordered child  
622                     support, employment-related compensation, or payment of debts. The notice must also  
623                     be made by publication in a reasonable geographic area.  
624  
625                     (E) If no claim is made within 60 days of the notice's publication date, the court shall  
626                     enter an order disposing of the property in accordance with section 33, 34, and 35.  
627  
628                     (F) A person wanting to assert a legal claim to the property shall, within 60 days of the  
629                     date of the applicable notice in (D), petition the court for a hearing to adjudicate the  
630                     validity of the alleged interest in the property. The petition for the hearing must be  
631                     signed by the claimant under penalty of perjury. It must state the nature and extent of the  
632                     claimant's right, title, or interest in the property; the time and circumstances of the  
633                     claimant's acquisition of the right, title, or interest; and any additional facts supporting  
634                     the claim and the relief sought.  
635  
636                     (G) The court shall schedule a hearing as soon as practicable to determine if the claimant  
637                     has a legal right, title or interest in the property or is a bona fide purchaser for value of  
638                     the legal right, title or interest in the property.  
639  
640                     **Section 38. {Return of Property, Damages, and Costs}**  
641  
642                     (A) The State shall return property to the owner within a reasonable period of time not to  
643                     exceed 3 business days after a court finds that:  
644  
645                         (1) the owner had a bona fide security interest;  
646  
647                         (2) the owner was an innocent owner;  
648  
649                         (3) charges against the owner were dismissed; or  
650  
651                         (4) the owner was found not guilty of the criminal charge that is the basis for  
652                         the forfeiture action.  
653  
654                     (B) If property returned under paragraph (A) has been damaged, the owner may make a  
655                     claim in small claims court or court for the damages to the seized property against the  
656                     agency that seized the property.

657  
658     (C) The State is responsible for any storage fees and related costs applicable to property  
659     returned under paragraph (A).

660  
661     **Section 39. {Penalty for Violations}**  
662

663     (A) Any person acting under color of law, official title, or position who takes any action  
664     intending to conceal, transfer, withhold, retain, divert, or otherwise prevent any proceeds,  
665     conveyances, real property, or any things of value forfeited under the law of the State or  
666     the United States from being applied, deposited, used, or returned to the owner in  
667     accordance with this chapter is subject to a civil penalty in an amount of three times the  
668     value of the forfeited property concealed, transferred, withheld, retained, or diverted.

669  
670     (B) Any taxpayer to the State has standing to challenge in court any action contrary to  
671     this Act.

672  
673     **Section 40. {Interaction with Federal Government}**  
674

675     (A) No unit of State government may transfer a criminal investigation or proceeding to  
676     the federal government to circumvent State forfeiture law.

677  
678     (B) For a State government unit to transfer a criminal investigation or proceeding that  
679     includes forfeiture to the federal government, a State court shall affirmatively find that:

- 680  
681         (1) the suspected criminal activity giving rise to the forfeiture is interstate in  
682         nature and sufficiently complex to justify the transfer; or  
683  
684         (2) the seized property is forfeitable only as a violation of federal law.

685  
686     (C) All funds paid by the federal government must be deposited into the State's treasury.  
687     The State shall credit:

- 688  
689         (1) the State government unit involved with the federal government sufficiently to  
690         reimburse it for investigation costs, excluding salaries, that the State government  
691         unit incurred related to the seizure of the assets subject to the forfeiture action and  
692  
693         (2) the remainder to the general fund.

694  
695     (D) No unit of State government may accept from the federal government any  
696     instrumentality or payment of proceeds not permitted by paragraph (C).

697  
698     (E) The State government unit shall report all transfers to the federal government of an  
699     investigation or criminal proceeding that involves forfeiture per the reporting  
700     requirements in section 36.

701

702 (F) Any taxpayer has standing to challenge in court the receipt of any proceeds or  
703 instrumentality by a State government unit from the federal government contrary to  
704 paragraphs (C) and (D).

705

706 **Section 41. {Attorneys' Fees}**

707

708 (A) In any forfeiture proceeding under this chapter in which the claimant prevails, the  
709 State is liable for:

710

711 (1) reasonable attorney fees and other litigation costs reasonably incurred by  
712 the claimant;

713

714 (2) postjudgment interest; and

715

716 (3) in cases involving currency, other negotiable instruments, or the proceeds  
717 of an interlocutory sale:

718 (a) interest actually paid to the State from the date of seizure of the  
719 property that resulted from the investment of the property in an  
720 interest-bearing account or instrument; and

721 (b) an imputed amount of interest that the currency, instruments, or  
722 proceeds would have earned at the rate applicable to the 30-day  
723 U.S. Treasury Bill, for any period during which no interest was  
724 paid (not including any period when the property reasonably  
725 was in use as evidence in an official proceeding or in  
726 conducting scientific tests for the purpose of collecting  
727 evidence), commencing 15 days after the property was seized  
728 by a law enforcement agency.

729

730 **Section 42. {Severability clause}**

731

732 **Section 43. {Repealer clause}**

733

734 **Section 44. {Effective date}**

## Comparison of Existing “ALEC Comprehensive Asset Forfeiture Act” (2000) and Proposed Policy

### Model Policy: Asset Forfeiture Process and Private Property Protection Act

Like eminent domain abuse, civil forfeiture represents one of the most serious threats to property rights in our nation today.

Civil forfeiture is very different from criminal forfeiture, where property can be taken only if someone is convicted of or pleads guilty to a crime. Under civil forfeiture, police and prosecutors can take property—your car, your cash, your business, or even your home—without so much as arresting or even charging you for any crime.

Civil forfeiture turns a fundamental American principle—that you are innocent until proven guilty—on its head. With civil forfeiture, your property is guilty until you prove it innocent.

Making matters worse, many law enforcement agencies often get to keep the property that they seize for their own use, thereby giving them a direct and perverse financial incentive to take as much property as possible.

The Institute for Justice, a libertarian public interest law firm best known for representing the property owners in the *Kelo* eminent domain case, released *Policing for Profit: the Abuse of Civil Asset Forfeiture* in 2010 that identified only three states, Maine, North Dakota and Vermont, with asset forfeiture laws and practices rated as "B" or higher.

To help states improve their forfeiture laws, the Institute commissioned a team to draft a model asset forfeiture law that is based on three simple but important ideas:

- (1) criminals should never benefit from the fruit of illegal activities;
- (2) the accused should be convicted before the state takes final title to property; and
- (3) law enforcement should not have incentives to prioritize forfeiture over other crimes by allowing agencies to share disproportionately in forfeited proceeds.

The proposed model asset forfeiture legislation builds on ALEC’s 2000 model. It includes detailed procedures that clarify processes for law enforcement, prosecutors, defense attorneys, courts, the accused, and innocent third parties.

## Asset Forfeiture Model Policy

### *Main Differences:*

	<b>ALEC Comprehensive Asset Forfeiture Act (2000)</b>	<b>Asset Forfeiture Process and Private Property Protection Act (Proposed)</b>
<b>Process</b>	Civil and criminal: In certain situations, the State can file civil forfeiture case, independent of criminal charges or prosecution. {Sections 2,3,4}	Allows for only criminal forfeiture. A conviction is required in all forfeiture cases before final title transfers to state. {Sections 4,5,6,7}
<b>Distribution of Assets</b>	No requirement.	Adopts hierarchy similar to bankruptcy including reimbursing law enforcement for investigation costs. Remaining funds go to State's general treasury. {Sections 33, 34, 35}
<b>Reporting to Legislators and Public</b>	No requirement.	Law enforcement must report monthly to state reporting agency detailing the kind, amounts and dates of property forfeited and underlying crime. State reporting agency must annually publish forfeitures to legislators and public. {Sections 22, 36}
<b>Innocent Partial and Joint Owner Property Protection</b>	Claimant has burden to prove that they did not have knowledge—courts can interpret as “constructive knowledge.” {Section 2, Articles f, g}	State has burden to prove that innocent claimants had “actual knowledge” of crime. {Section 32}
<b>Return of Property and Penalty for Violations</b>	State must pay interest to owner on seized assets that are returned to the owner. {Section 4}	<ul style="list-style-type: none"> <li>○ Similarly, state must pay interest.</li> <li>○ Establishes limit of 3 days to return wrongly seized property.{Section 37}</li> <li>○ Penalizes misconduct by officials who wrongly prevent property from being returned to the owner including a civil penalty of three times the value of the seized property. {Section 39}</li> </ul>
<b>Other Differences</b>	No similar requirements.	<ul style="list-style-type: none"> <li>○ Prosecutors may seize substitute assets, {Section 12}</li> <li>○ Property owner may post bond, {Section 23}</li> <li>○ Quick mitigation process, {Section 24}</li> <li>○ Quick replevin hearing, {Section 25}</li> <li>○ Proportionality, {Section 29}</li> <li>○ Regulates interaction with fed. gov't, {Section 39}</li> <li>○ Limits law enforcement buying assets. {Section 34}</li> </ul>

1           **DRAFT Resolution on Transparency and Accountability in Criminal Law**

2

3           *Summary*

4

5       This resolution upholds the principles of transparency and accountability in government when it  
6       comes to the creation and enhancement of criminal laws. The state of [insert state here]  
7       appreciates the vital role that criminal law plays in protecting public safety and ensuring justice  
8       for victims. At the same time, given that criminal law entails the most coercive form of  
9       regulation a government can impose, it is critical that, before the body of criminal law in a state  
10      is modified, the proposal be fully vetted by lawmakers and the public and that only duly elected  
11      legislative bodies be empowered with the authority to criminalize conduct. By requiring that  
12      legislation introduced which would create or enhance a criminal penalty so state in its caption,  
13      include a fiscal note that encompasses both state and local costs, and that all offenses be created  
14      and enhanced by democratically elected bodies rather than unelected bureaucrats, this resolution  
15      promotes a level of transparency and accountability that is proportionate to the serious  
16      consequences associated with criminal laws.

17           *Model Resolution*

18

19       **WHEREAS**, the number and breadth of criminal laws has grown dramatically in recent years at  
20       the federal level and in many states; and

21       **WHEREAS**, there are now more than 4,500 federal statutory crimes and thousands more  
22       regulatory crimes created by agency rulemaking; and

23       **WHEREAS**, as an example, in the last decade in Texas, an average of more than 40 new  
24       criminal laws and sentencing enhancements have been passed in each legislative session in the  
25       last decade, contributing to a body of law that now has more than 1,700 offenses, including  
26       felonies relating to harvesting oysters, and that certain Texas statutes allow agencies to impose  
27       criminal penalties for any violation of their rules; and

28       **WHEREAS**, there have been recent examples of members of Congress acknowledging they  
29       were unaware of what they were voting on, had not read the legislation before voting, and stating  
30       that Congress needed to pass the legislation so that it could later be determined what was in it;  
31       and

32       **WHEREAS**, many federal and state proposals that create and enhance criminal penalties do not  
33       include a comprehensive fiscal note that reflects the estimated costs to both the public and  
34       private sectors, including corrections, courts, prosecutorial expenses, public defenders and  
35       appointed counsel for indigent defendants, law enforcement, compliance costs for businesses,  
36       and other costs; and

37       **WHEREAS**, the creation of new criminal penalties is often obscured because these penalties are  
38       buried in legislation that is thousands of pages such as the convoluted Dodd-Frank bill enacted  
39       by Congress; and

40

47   **WHEREAS**, federal and state agencies have created thousands of regulatory crimes based on  
48   purported implicit authority provided by catch-all statutory provisions allowing agencies to  
49   impose criminal penalties for violations of their rules which apply to conduct that has never been  
50   expressly criminalized by a statute duly enacted by the appropriate legislative body; and

51  
52   **WHEREAS**, when conduct not expressly criminalized by statute can be criminalized on a daily  
53   basis by federal and state agencies, it is difficult if not impossible for individuals and businesses  
54   to keep track of the ever-growing body of criminal law; and

55  
56   **WHEREAS**, the gravity of criminal law demands that those democratically elected  
57   policymakers who are directly accountable to the public determine what constitutes criminal  
58   conduct and that this power not be delegated to unaccountable bureaucrats; and

59  
60   **NOW, THEREFORE BE IT RESOLVED**, that the state of [insert state here] shall require  
61   that all legislation creating or enhancing a criminal penalty so indicate in its caption; and

62  
63   **BE IT FURTHER RESOLVED**, that that all legislation creating or enhancing a criminal  
64   penalty be accompanied by a comprehensive fiscal note that sets forth the estimated costs to both  
65   the public and private sectors, including corrections, courts, prosecutorial expenses, public  
66   defenders and appointed counsel for indigent defendants, law enforcement, compliance costs for  
67   businesses, and other costs; and

68  
69   **BE IT FURTHER RESOLVED**, that the state of [insert state here] shall not enact statutes that  
70   provide agencies with the power to criminalize violations of their rules unless the conduct  
71   involved is expressly prohibited by a legislatively enacted statute and that any existing catch-all  
72   statutes that purport to delegate criminal lawmaking to agencies be repealed or revised  
73   accordingly.

1           **DRAFT Resolution on Sex Offender Registration and Notification Act**  
2           **(SORNA)**

3  
4           ***Summary***

5  
6       ALEC strongly supports the application of strong state laws and strict supervision of sex  
7       offenders. However, a federal mandate that conditions unrelated federal funding on states  
8       adopting a sex offender registry that meets restrictive federal requirements is inconsistent with  
9       principles of federalism and the Tenth Amendment and places an economic burden on the states.  
10      This resolution supports state flexibility to determine the parameters of their own registries to  
11      best achieve the goals of justice, public safety, and recidivism reduction.

12  
13           ***Model Resolution***

14  
15       **WHEREAS**, in 2006, the federal government passed the Adam Walsh Child Protection and  
16       Safety Act (Walsh Act), which included the Sex Offender Registration and Notification Act  
17       (SORNA), in order to centralize standards and control of sex offender registries with the federal  
18       government, after mandating that states create sex offender registries in 1994; and

19  
20       **WHEREAS**, SORNA requires states to include juvenile offenders in their registries if the  
21       juvenile was at least 14 years old and the offense was comparable to or more severe than  
22       aggravated sexual abuse, as defined in federal law; and,

23  
24       **WHEREAS**, the federal government provided states three years to comply with SORNA's  
25       requirements or face cuts to federal grants, and the first state to be found compliant was Ohio in  
26       September of 2009, after which the federal government then extended the compliance deadline  
27       until 2010; and,

28  
29       **WHEREAS**, as of July, 2011, only 14 states, one territory, and nine tribes had substantially  
30       implemented SORNA; and,

31  
32       **WHEREAS**, the federal mandate requires certain classes of juvenile offenders to be in the state  
33       registry for their entire lifetime;

34  
35       **WHEREAS**, the federal mandate requires that states classify individuals based on offense level  
36       without consideration of risk as many states currently do in conformity with research in the field;

37  
38       **WHEREAS**, ALEC supports the intent behind the Walsh Act to protect the public from sex  
39       offenders; and,

40  
41       **WHEREAS**, state efforts to protect the public and supervise sex offenders are preempted by the  
42       requirements in SORNA, which also creates an unfunded mandate upon the states as the Walsh  
43       Act does not include appropriations for implementation; and,

44  
45       **WHEREAS**, in 2011, the Texas Legislative Budget Board determined that it would cost Texas  
46       more than \$30 million to bring its registry in compliance with the federal mandate;

47

48   **WHEREAS**, if states do not comply with the provisions of SORNA, they face losing a share of  
49   the federal Byrne criminal justice grants that they would otherwise receive;

50

51   **WHEREAS**, it is essential that the states maintain authority over juveniles adjudicated in state  
52   courts, including circumstances and length of punishment, and defining the criteria for those  
53   juveniles who must register;

54

55   **WHEREAS**, consistent with the constitutional principles of federalism and the Tenth  
56   Amendment, state and local governments, not the federal government, should play the primary  
57   role in developing and implementing effective responses to criminal activity that does not  
58   involve international or homeland security issues, as states provide laboratories of innovation in  
59   which different approaches can be tested, adjusted, and replicated based on results; and,

60

61   **WHEREAS**, states should have the power to make and enforce their criminal laws,  
62   punishments, penalties, and supervisions in order to best protect their citizens; and,

63

64   **NOW, THEREFORE BE IT RESOLVED**, that ALEC supports proper deference to state  
65   authorities in SORNA and flexibility in the implementation of SORNA while achieving the goals  
66   of the Walsh Act.

1                   **DRAFT Juvenile Offender Performance Incentive Funding Act**

2

3                   ***Summary***

4

5       The provisions of this act are intended to incentivize the reduction of juvenile re-offending,  
6       reduce costs to taxpayers, and increase victim restitution, by giving probation departments a  
7       share of the savings to the state in reduced incarceration costs when they lower recidivism and  
8       commitments of youths to the state.

9

10                  ***Model Legislation***

11

12                  **Section 1. {Intent}**

13

14       (A) The provisions of this act are intended to reduce recidivism rates in juvenile offenders, while  
15       decreasing juvenile correctional costs, by giving local probation departments a share of the  
16       savings to the state when they reduce the number of juveniles committed to state custody for  
17       incarceration. By linking funding to performance, this legislation creates a positive incentive  
18       for local juvenile probation departments to improve their treatment practices for juveniles to  
19       both enhance public safety and reduce costs to taxpayers.

20

21                  **Section 2. {Definitions}**

22

23       (A) “Evidence-based practices” means supervision policies, procedures, programs and practices  
24       that scientific research demonstrates reduce recidivism among juveniles on probation, parole,  
25       or post-release supervision.

26

27       (B) “Supervised juvenile” means a juvenile placed on probation by a court or serving a period of  
28       parole or post-release supervision from incarceration.

29

30       (C) “Conditions of supervision” means conditions of probation, parole or other form of post-  
31       prison supervision.

32

33                  **Section 3. {Calculation of State Juvenile Incarceration Savings}**

34

35       (A) The [state oversight agency] shall annually calculate:

36

37               (1) For each local juvenile probation department, the percentage change in the number of  
38               juveniles committed to state custody for incarceration as a ratio of overall referrals to the  
39               juvenile probation department for that year. This calculation shall be compared to the  
40               fiscal year prior to the fiscal year in which the report is required pursuant to Section 6 of  
41               this title.

42

- 43       (2) Any state expenditures that have been avoided by reductions in rates of juveniles  
44           committed to state custody for incarceration by each county, as calculated in paragraph  
45           (1) of this section.

46

47 **Section 4. {Performance Incentive Funding}**

48

49 (A) Beginning in fiscal year 201[x], the legislature shall annually appropriate up to 45 percent of  
50           any state expenditures that are avoided as calculated in Section 3 of this title. Such averted  
51           expenditures shall be appropriated to the [state or local agency or agencies] responsible for  
52           those savings.

53

54 (B) The appropriations in paragraph (A) of this section are subject to the following provisions:

- 55
- 56       (1) None of the calculated savings shall be appropriated annually to the [state or local agency  
57           or agencies] if there is an increase in the percentage of juveniles committed to state  
58           incarceration by [that agency or agencies] as calculated in Section 3 paragraph (A)(1) of  
59           this title.
- 60
- 61       (2) Of the state expenditures that have been avoided by a reduction in the proportion of  
62           juveniles committed state custody for incarceration as calculated in Section 3 paragraph  
63           (A)(1) of this section:
- 64
- 65           (a) Thirty percent of the total savings shall be appropriated to the state or local agency or  
66           agencies;
- 67
- 68           (b) An additional five percent of the total savings shall be appropriated to the [state or  
69           local agency or agencies] if there is an increase in the percentage of juveniles who are  
70           supervised by [that agency or agencies] and who are employed in a full-time job,  
71           employed part time for at least 25 hours per week, or attending school full-time,  
72           provided that the agency has submitted data to the [state oversight agency] showing  
73           such increases, and the [state oversight agency] includes this information in the report  
74           required pursuant to Section 6 of this title;
- 75
- 76           (c) An additional five per cent of the total savings shall be appropriated to the [state or  
77           local agency or agencies] if there is an increase in the percentage of juveniles who are  
78           supervised by that [agency or agencies] who are current in their payments of victim  
79           restitution, provided that the [agency] has submitted data to the [state oversight  
80           agency] showing such increases and the [state oversight agency] includes this  
81           information in the report required pursuant to Section 6 of this title;
- 82
- 83           (d) An additional five percent of the total savings shall be appropriated to the [state or  
84           local agency or agencies] if there is a decrease in the percentage of juveniles who are  
85           supervised by [that agency or agencies] and who test positive for controlled  
86           substances.

87  
88       (3) The monies appropriated pursuant to this title shall be used to supplement, not supplant,  
89           any other state or county appropriations for probation, parole or other post-prison  
90           supervision services.

91  
92       **Section 5. {Use of Funds}**

93  
94       (A) Monies received through appropriations pursuant to this title shall be used for the following  
95           purposes:

96           (1) Implementation of evidence-based practices;

97           (2) Increasing the availability of risk reduction programs and interventions, including  
98              problem-solving courts, substance abuse treatment programs, family-based treatment  
99              programs, and mental health treatment programs, for supervised juveniles;

100          (3) Grants to nonprofit victim services organizations to partner with the community  
101              corrections agencies and courts to assist victims and increase the amount of restitution  
102              collected from juvenile probationers.

103  
104       **Section 6. {Reports}**

105       (A) On or before [October 1] of each year, beginning in 201[x], the judicial branch, [units of  
106           local government] and the state [Department of Juvenile Justice] shall jointly report to the  
107           [state oversight agency] the data necessary for the [state oversight agency] to perform the  
108           calculations required by Section 3 of this title. The report shall provide separate figures for  
109           probation and parole or other form of post-prison supervision and include for the prior fiscal  
110           year:

111           (1) The number of supervised juveniles, by agency; and

112           (2) The number and percentage of supervised juveniles, by agency, who were committed to  
113              state custody for incarceration by the [Department of Juvenile Justice].

114       (B) On or before [December 1] of each year, beginning in 201[x], the [state oversight agency]  
115           shall report each year on the implementation of this title to the president of the senate, the  
116           speaker of the house of representatives, the chief justice of the supreme court, and the  
117           governor. The report shall include the calculations made pursuant to this Section 3 of this  
118           title and the resulting performance incentive funding, if any, to be appropriated.

119       (C) The [state oversight agency] shall make its full report and an executive summary available to  
120           the general public on its website.

## MOTION

## **DRAFT Amendments to the “ALEC Consistency in Firearms Regulation Act”**

Ms. Tara Mica, *National Rifle Association*, motions to amend the “ALEC Consistency in Firearms Regulation Act” (1999) by striking and introducing the following:

### *Summary*

This Act would prohibit local jurisdictions from independently enacting restrictions on the possession of firearms. This Act would also preempt the right of local jurisdictions to bring certain civil actions against firearms or ammunition manufacturers, trade associations, and dealers.

## *Model Legislation*

{Title, enacting clause, etc.}

**Section 1. {Title.}** This Act may be cited as the Consistency in Firearms Regulation Act.

## Section 2. {Intent: Declaration}

The purpose of this section is to establish complete state control over regulation and policy pertaining to firearms, firearm accessories, and ammunition in order to ensure that such regulation and policy is applied uniformly throughout this state to each person subject to the state's jurisdiction and to ensure protection of the right to keep and bear arms recognized by the Constitution of the United States [and of this State, if applicable]. This section is to be liberally construed to effectuate its purpose. The (*insert state body*) declares that the lawful design, marketing, manufacture, or sale of firearms or ammunition to the public is not unreasonably dangerous activity and does not constitute a nuisance per se, and further finds that the unlawful use of firearms and ammunition, rather than their lawful design, marketing, manufacture, or sale, is the proximate cause of injuries arising from their unlawful use.

### Section 3. {Definitions}

(A) As used in this Act:

(1) "Ammunition" means fixed cartridge ammunition, shotgun shells, the individual components of fixed cartridge ammunition and shotgun shells, projectiles for muzzleloading firearms, and any propellant used in firearms or ammunition.

45           (2) “Firearm accessory” means a device specifically adapted to enable the  
46           wearing or carrying about one’s person, or the storage or mounting in or on a  
47           conveyance, of a firearm, or an attachment or device specifically adapted to be  
48           inserted into or affixed onto a firearm to enable, alter, or improve the functioning  
49           or capabilities of the firearm.

50

51           (3) “Firearm” means a pistol, revolver, rifle, shotgun, machine gun, submachine  
52           gun, or black powder weapon which is designed to, capable of, or may be readily  
53           converted to expel a projectile by the action of an explosive.

54

55           (4) “Person adversely affected” means, in addition to any person who otherwise  
56           has standing pursuant to the laws of the State to bring an action under this section,  
57           any person who:

58

59                 (a) Can legally possess a firearm under the laws of the State and the  
60                 United States;

61

62                 (b) Owns, possesses, stores, transports, carries or transfers firearms,  
63                 ammunition or ammunition components within the political subdivision in  
64                 question or would do so but for the ordinance, resolution, rule or practice  
65                 at issue; and

66

67                 (c) Is, or if present in the political subdivision in question would be,  
68                 subject to the ordinance, resolution, rule or practice at issue, whether or  
69                 not specific enforcement action has been initiated or threatened against  
70                 such person; or

71

72                 (d) A membership organization the members of which include a person  
73                 described in subparagraphs (a) through (c) of this Section and that is  
74                 dedicated in whole or in part to protecting the legal, civil or constitution  
75                 rights of its membership.

76

77           (5) “Political subdivision” means a county, city, township, school district, or any  
78           other subunit of this state.

79

80           (6) “Post-judgment liquidated damages.” A sum equal to three times the actual  
81           damages, reasonable attorney fees and costs incurred by a party who successfully  
82           brings or maintains an action described under Subsections (4)(D) and (E) of this  
83           Act.

84

85           (7) “Prejudgment liquidated damages.” A sum equal to two times the actual  
86           damages, reasonable attorney fees and costs incurred by a party who brings or  
87           maintains an action described under Subsections (4)(D) and (E) of this Act.

88

89           **Section 4. {State preemption of local firearms laws; Exceptions; Remedies for**  
90           **unlawful regulation.}** Any political subdivision shall not impose special taxation on,

91 ~~enact any law, ordinance or regulation pertaining to, or regulate in any other manner the~~  
92 ~~ownership, registration, purchase, sale, transfer, transportation, carrying, or possession of~~  
93 ~~handguns or other firearms, ammunition for handguns or other firearms, or components~~  
94 ~~of handguns or other firearms, except as otherwise provided in state or federal law.~~

95 (A) Except as otherwise provided in this section or as expressly authorized by a statute of  
96 this state, the regulation of all of the following is hereby declared to be the exclusive  
97 domain of the state:

98           (1) Firearms, firearm accessories, and ammunition.

99           (2) The ownership, possession, carrying, transportation, registration, transfer, and  
100           storage of firearms, firearm accessories, and ammunition.

101           (3) Commerce in and taxation of firearms, firearm accessories, and ammunition.

102           (4) Any other matter pertaining to firearms, firearm accessories, and ammunition.

103           (B) An ordinance, rule, resolution, or policy adopted by a political subdivision of this  
104           state, or an official action -- including in any legislative, police power, or proprietary  
105           capacity -- taken by an employee or agent of such political subdivision in violation of this  
106           section is void.

107           (C) This section shall not be construed to prevent any of the following:

108           (1) A duly organized law enforcement agency of a political subdivision from  
109           promulgating and enforcing rules pertaining to firearms, firearm accessories, or  
110           ammunition issued to or used by peace officers in the course of their official  
111           duties.

112           (2) An employer from regulating or prohibiting an employee's carrying or  
113           possession of firearms, firearm accessories, or ammunition during and in the  
114           course of the employee's official duties [except as provided in the jurisdiction's  
115           worker protection/parking lot law, if any].

116           (3) A court or administrative law judge from hearing and resolving a case or  
117           controversy or issuing an opinion or order on a matter within its jurisdiction.

118           (4) The enactment or enforcement of a generally applicable zoning or business  
119           ordinance that includes firearms businesses along with other businesses, provided  
120           that an ordinance designed or enforced to effectively restrict or prohibit the sale,  
121           purchase, transfer, manufacture, or display of firearms, firearm accessories, or  
122           ammunition that is otherwise lawful under the laws of this state is in conflict with  
123           this section and is void.

124           (5) A political subdivision from enacting or enforcing rules of operation and use  
125           for any firearm range owned and operated by the political subdivision.

- 137  
138       (6) A political subdivision from enacting or enforcing ordinances pertaining to  
139           the reckless or negligent discharge of a firearm.
- 140  
141       (7) A political subdivision from sponsoring or conducting any firearm-related  
142           competition or educational or cultural program and from enacting and enforcing  
143           rules for participation in or attendance at such program.
- 144  
145       (D) A person adversely affected by any ordinance, resolution, rule, or practice  
146           promulgated or enforced in violation of Subsection (B) of this Section may file suit in an  
147           appropriate court for declarative and injunctive relief and for all actual and consequential  
148           damages attributable to the violation.
- 149  
150       (E) Notwithstanding any other provision of law, a party who brings or maintains an  
151           action at law or in equity against a political subdivision that has regulated the ownership,  
152           possession, storage, carrying, transfer or transportation of firearms, firearm accessories,  
153           ammunition or ammunition components in violation of Subsection (B) of this Section  
154           shall be entitled to:
- 155  
156           (1) Reimbursement of actual damages and reasonable attorney's fees and costs  
157           incurred if, within 30 days of commencement of the action but prior to a final  
158           determination by a court in favor of either party, the political subdivision rescinds  
159           or repeals the ordinance, resolution, rule or practice at issue in the action.
- 160  
161           (2) Prejudgment liquidated damages if, after the expiration of the 30-day period in  
162           subparagraph (1) but prior to a final determination by a court in favor of either  
163           party, the political subdivision rescinds or repeals the ordinance, resolution, rule  
164           or practice at issue in the action.
- 165  
166           (3) Post-judgment liquidated damages upon a final determination by a court in  
167           favor of the party who brings or maintains the action.
- 168  
169       **Section 5. {State preemption of local suits pertaining to firearms or ammunition}**
- 170       The authority to bring suit and right to recover against any firearms or ammunition  
171           manufacturer, trade association, or dealer by or on behalf of any governmental unit  
172           created by or pursuant to an Act of the (insert name of state legislature) or the  
173           constitution, or any department, agency, or authority thereof, for damages, abatement, or  
174           injunctive relief resulting from or relating to the lawful design, manufacture, marketing,  
175           or sale of firearms or ammunition to the public shall be reserved exclusively to the state.  
176       Furthermore, no action against any firearms or ammunition manufacturer, trade  
177           association, or dealer shall be brought without the authorization of the (insert name of  
178           legislature) by adoption of a concurrent resolution or by enactment of a law. This  
179           paragraph shall not prohibit a political subdivision or local government authority from  
180           bringing an action against a firearms or ammunition manufacturer or dealer for breach of  
181           contract or warranty as to firearms or ammunition purchased by the political subdivision  
182           or local government authority. This paragraph shall not prohibit actions for injuries

183 resulting from a firearm malfunction due to defects in design or manufacture.

184

185 **Section 6. {Applicability}** Section 4 of this Act applies to an ordinance, rule, resolution  
186 or policy adopted by a political subdivision of this state or to official actions taken by an  
187 employee or agent of such political subdivision, prior to or on or after the effective date  
188 of this Act. The remedies prescribed under Section 4 of this Act shall take effect 90 days  
189 after the enactment date of this Act to provide political subdivisions an opportunity to  
190 come into compliance with the Act's provisions. Section 5 of t[T]his Act shall apply to  
191 any action pending on or brought on or after the date this Act becomes effective.

192

193 **Section 7. {Severability clause.}**

194

195 **Section 8. {Repealer clause.}**

196

197 **Section 9. {Effective date.}**

1                   **DRAFT Prescription for Pseudoephedrine Products**

2

3                   ***Summary***

4

5     This bill classifies any compound, mixture, or preparation, including any preparation in  
6     liquid, liquid capsule, or gel capsule form, that contains pseudoephedrine as a Schedule  
7     III drug, requiring a prescription.

8

9                   ***Model Legislation***

10

11                  **{Title, enacting clause, etc.}**

12

13                  **Section 1. {Definitions}**

14

15     (A) For the purposes of this section, “Schedule III drug” means:

16

17         (1) A substance that has a potential for abuse less than substances in schedules I  
18         or II; and

19

20         (2) Abuse of substance may lead to moderate or low physical dependence or high  
21         psychological dependence; and

22

23         (3) A substance that requires a prescription.

24

25                  **Section 2. {Classification of Pseudoephedrine}**

26

27     Any compound, mixture, or preparation, including any preparation that is in liquid, liquid  
28     capsule, or gel capsule form, containing any detectable quantity of pseudoephedrine, its  
29     salts or optical isomers, or salts of optical isomers is a Schedule III drug.

30

31                  **Section 3. {Severability Clause}**

32

33                  **Section 4. {Repealer Clause}**

34

35                  **Section 5. {Effective Date}**

SUPPLMENTARY MATERIALS  
For Overcriminalization Subcommittee Discussion

**DRAFT Criminal Offense Justification Act**

1           **Summary**

2  
3  
4       This Act requires justification for enacting new criminal offenses or making changes to  
5       existing criminal offenses. The Act would require new criminal laws to take into account  
6       the crime's prevalence, relation to current laws, and similarity to existing offenses to  
7       prevent the proliferation of unnecessary criminal laws or changes to existing criminal  
8       laws.  
9

10           **Model Legislation**

11           **{Title, enacting clause, etc.}**

12           **Section 1. {Title}**

13       This Act may be cited as the "Criminal Offense Justification Act."

14           **Section 2. {Legislative Intent}**

15       (A) To prevent the proliferation of unnecessary criminal laws or changes to existing  
16       criminal laws.

17           **Section 3. {Definitions}**

18       (A) "Criminal Offense" means an act punishable by law.

19       (B) "*Mens Rea*" means the criminal intent of the offender. It is the mental element  
20       of a criminal offense.

21       (C) "Analysis" means a description and evaluation of the expected effects of the  
22       new criminal offense or proposed changes to existing criminal offenses. An  
23       analysis must include a written documentation of all assumptions made when  
24       performing the analysis.

25       (D) "Legislative Counsel" means a nonpartisan legislative agency that provides bill  
26       drafting, computing, and legal, scientific, and other research services for the  
27       Legislature. This includes appropriate think tanks or state organizations as  
28       determined by legislature.

29           **Section 4. {Requirements of New or Altered Criminal Laws}**

30       (A) Any legislative measure which creates a new criminal offense, increases or decreases  
31       the crime classification of an existing criminal offense, or changes an element of an  
32       existing offense that creates a new factual basis for the offense is to include a written  
33       analysis performed by **{insert appropriate state legislative counsel or think tank}**. The

47 analysis is to include one or more of the following to prevent the proliferation of  
48 unnecessary criminal laws:

49

50 (1) A description of the wrongful conduct and harms that the legislative measure  
51 is intended to address, including a description of the inadequacies of existing  
52 law to address the wrongful conduct and harms;

53

54 (2) A description of the elements of the new criminal offense, or a description of  
55 the new, amended, or additional elements of an existing crime, and a  
56 description of how each of the criminal offense's mens rea or criminal-intent  
57 requirement in the crime should be interpreted and applied to each element of  
58 the crime;

59

60 (3) A written assessment of whether the wrongful conduct covered by the new  
61 criminal offense, or by changes to an existing criminal offense, may be  
62 charged as a crime under current [insert state] law or addressed by civil law  
63 or non-criminal administrative rules and regulations;

64

65 (4) A comparison of the proposed crime classification to the crime classification  
66 of similar types of offenses;

67

68 (5) A written evaluation of the current and anticipated future prevalence of the  
69 wrongful conduct that the proposed new criminal offense, or changes to an  
70 existing criminal offense, intends to address; and

71

72 (6) A written evaluation of the legislative measure's expected fiscal impact on  
73 state and local law enforcement, prosecutorial and defender services, courts,  
74 probation services, and prison supervision personnel and populations, and an  
75 analysis of how any costs associated with the legislative measure will be paid.

76

77 **Section 4. {Severability Clause}**

78

79 **Section 5. {Repealer Clause}**

80

81 **Section 6. {Effective Date}**



## **Mission Statement**

The American Legislative Exchange Council's mission is...

To advance the Jeffersonian Principles of free markets, limited government, federalism, and individual liberty through a nonpartisan public-private partnership among America's state legislators, concerned members of the private sector, the federal government, and the general public.

To promote these principles by developing policies that ensure the powers of government are derived from, and assigned to, first the People, then the States, and finally the Federal Government.

To enlist state legislators from all parties and members of the private sector who share ALEC's mission.

To conduct a policy making program that unites members of the public and private sector in a dynamic partnership to support research, policy development, and dissemination activities.

To prepare the next generation of political leadership through educational programs that promote the principles of Jeffersonian democracy, which are necessary for a free society.

## SCHOLARSHIP POLICY BY MEETING

### **ALEC Spring Task Force Summit:**

1. ***Spring Task Force Summit Reimbursement Form:*** ALEC Task Force Members are reimbursed by ALEC up to \$350.00 for travel expenses. Receipts must be forwarded to the ALEC Policy Coordinator and approved by the Director of Policy.
2. ALEC Task Force Members' room & tax fees for up to a two-night stay at the host hotel are covered by ALEC.
3. Registration fees are not covered; however, Task Force Members may submit registration expenses for payment from their state scholarship account upon approval of the State Chair.
4. ***Official Alternate Task Force Members*** (chosen by the State Chair and whose names are given to ALEC more than 35 days prior to the meeting to serve in place of a Task Force Member who cannot attend) are reimbursed in the same manner as Task Force Members.
5. ***State Scholarship Reimbursement Form:*** Any fees above the set limit, or expenses other than travel and room expenses can be submitted by Task Force Members for payment from their state scholarship account upon the approval of the State Chair. Receipts must be submitted to the State Chair, who will submit the signed form to the Director of Membership.
6. ***Non-Task Force Members*** can be reimbursed out of the state scholarship fund upon State Chair approval. Receipts must be submitted to the State Chair, who will submit the appropriate signed form to the Director of Membership.

### **ALEC Annual Meeting:**

***State Scholarship Reimbursement Form:*** State scholarship funds are available for reimbursement by approval of your ALEC State Chair. Expenses are reimbursed after the conference, and may cover the cost of travel, room & tax, and registration. Receipts are to be submitted to the State Chair, who will then submit the signed form to the Director of Membership.

### **ALEC States & Nation Policy Summit:**

1. ***States & Nation Policy Summit Reimbursement Form:*** ALEC offers two scholarships per state to cover the cost of travel, room & tax, and registration not to exceed \$1,000.00 per person for a total of \$2,000.00 per state. ALEC scholarship recipients must be named by the ALEC State Chair. Expenses are submitted to the State Chair and reimbursed after the conference. The State Chair submits the signed form to the Director of Membership.
2. ***State Scholarship Reimbursement Form:*** Any other fees or payments must come out of the state scholarship account, with the approval of the State Chair. Receipts must be submitted to the State Chair, who submits the signed form to the Director of Membership.

### **ALEC Academies:**

***Academy Reimbursement Form:*** Attendees of ALEC Academies are reimbursed by the Task Force Committee hosting the Academy. Attendees will receive a form at the Academy, and will be reimbursed up to \$500.00 for travel, and room & tax fees for a two-night stay by ALEC. Receipts must be forwarded to the appropriate Task Force Director and approved by the Director of Policy.

# 2011 ALEC STATES AND NATION POLICY SUMMIT

November 30 – December 2, 2011

The Westin Kierland Hotel  
6902 E. Greenway Parkway • Scottsdale, AZ 85254

STATES &  
NATION  
POLICY SUMMIT

PHOENIX, AZ  
Nov. 30 - DEC. 2, 2011

## ATTENDEE REGISTRATION / HOUSING FORM

Early registration deadline: November 7, 2011  
Housing cut-off date: November 7, 2011

Online  
[www.alec.org](http://www.alec.org)

Fax (credit cards only)  
202.331.1344

Phone / Questions  
Registration 202.742.8538 (Mon-Fri, 9am-5:30 pm Eastern)  
Housing 1-866-716-8137 (Available 24/7)

### ATTENDEE INFORMATION

Prefix (required)  Sen  Rep  Del  Mr  Mrs  Ms  Other \_\_\_\_\_  
Last Name \_\_\_\_\_ First Name \_\_\_\_\_ Middle Initial \_\_\_\_\_ Badge Nickname \_\_\_\_\_  
Title \_\_\_\_\_  
Organization (required) \_\_\_\_\_  
Mailing Address  Business  Home \_\_\_\_\_  
City \_\_\_\_\_ State/Province \_\_\_\_\_ Country \_\_\_\_\_ ZIP/Postal code \_\_\_\_\_  
Daytime phone \_\_\_\_\_ Fax \_\_\_\_\_ Alternate phone \_\_\_\_\_  
Email (confirmation will be sent by email) \_\_\_\_\_  
Emergency Contact Name \_\_\_\_\_ Daytime Phone \_\_\_\_\_ Evening Phone \_\_\_\_\_  
Dietary Restrictions \_\_\_\_\_  
Spouse / Guest: If registering a spouse or guest, please complete the spouse/guest registration form.

### REGISTRATION INFORMATION

#### Registration Fees

Note: Member fees are subject to verification

	Early Until Nov 7	Onsite Begin Nov 8	Daily
<input type="checkbox"/> ALEC Legislative Member	\$375	\$475	\$245
<input type="checkbox"/> Legislator / Non-Member	\$475	\$575	\$345
<input type="checkbox"/> ALEC Private Sector Member	\$725	\$875	\$445
<input type="checkbox"/> Private Sector Non-Member	\$925	\$1100	\$545
<input type="checkbox"/> ALEC Non-Profit Member (501(c)(3) status required)	\$525	\$625	\$345
<input type="checkbox"/> Non-Profit Non-Member (501(c)(3) status required)	\$675	\$825	\$445
<input type="checkbox"/> Legislative Staff / Government	\$400	\$500	\$245
<input type="checkbox"/> ALEC Alumni	\$425	\$525	\$295
<input type="checkbox"/> ALEC Legacy Member	\$0	\$0	\$0

For Daily Registration, circle which day:  Wed  Thur  Fri

REGISTRATION FEE : \$ \_\_\_\_\_

(Subtract \$50 from your registration fee if you are booking at The Westin Kierland Hotel)

**REGISTRATION CONFIRMATION INFORMATION** Online registrants will receive immediate email confirmation. If registering by form, confirmation will be emailed within 72 hours of receipt of payment.

**Note:** Registration forms with enclosed payments must be received by November 7, 2011 to be eligible for early bird registration rates. Forms and/or payments received after November 7, 2011 will be subject to on-site registration rates.

**DISCOUNT** You are eligible for \$50 discount on registration fee if you are registering and booking accommodations in ALEC's room block at The Westin Kierland Hotel before November 7, 2011. Hotel reservations will be verified for those who receive discounted rate. If you receive a discount and later cancel your Westin room reservation, you will be charged (or you will be invoiced) for an additional \$50 for your registration fee after the meeting.

#### METHOD OF REGISTRATION PAYMENT

Credit Card: Credit cards will be charged immediately.

Amer Express  Visa  MasterCard

Card # \_\_\_\_\_

Cardholder (please print) \_\_\_\_\_

Exp Date (mm/yy) \_\_\_\_\_ / \_\_\_\_\_ Signature \_\_\_\_\_

**REGISTRATION CANCELLATION / REFUND INFORMATION** Registrations cancelled prior to 5:00 pm Eastern November 7, 2011 are subject to a \$100 cancellation fee. Registrations are non-refundable after 5:00 pm Eastern November 7, 2011. Registration fees may be transferred from one registrant to another.

All refund requests must be made in writing and sent via email to [meetings@alec.org](mailto:meetings@alec.org) or fax to 202-331-1344.

### HOUSING

### RESERVATION CUTOFF FOR ALEC DISCOUNTED RATE IS NOVEMBER 7, 2011

**\*\*Save \$50 on registration by booking your hotel room in ALEC's room block at The Westin Kierland Hotel\*\***

I do not require a reservation at this time.

Arrival Date \_\_\_\_\_ Departure Date \_\_\_\_\_

Sharing room with \_\_\_\_\_

#### Room type

<input type="checkbox"/> Single	(1 Adult)	\$ 208
<input type="checkbox"/> Double	(2 Adults)	\$ 208
<input type="checkbox"/> Triple	(3 Adults)	\$ 258
<input type="checkbox"/> Quad	(4 Adults)	\$ 308

\* All rates DO NOT include sales tax 12.27 % (subject to change)

**Note:** Cutoff for reservations at the ALEC rate is November 7, 2011. After November 7, 2011, every effort will be made to accommodate new reservations, based on availability and rate.

#### HOUSING CONFIRMATION INFORMATION

Online reservations will receive immediate email confirmation. Reservations received by form will be confirmed via email within 72 hours of receipt.

#### METHOD OF HOUSING PAYMENT

Please use the same method of payment as above.

Credit Card: Credit Cards will be used to guarantee the reservation.

Amer Express  Visa  MasterCard  Discover

Card # \_\_\_\_\_

Cardholder (please print) \_\_\_\_\_

Exp Date (mm/yy) \_\_\_\_\_ / \_\_\_\_\_ Signature \_\_\_\_\_

#### HOUSING CANCELLATION / REFUND INFORMATION

Credit cards will be charged one night room and tax in the event of a no show or if cancellation occurs within 72 hours prior to arrival. Please obtain a cancellation number when your reservation is cancelled.

# 2011 ALEC STATES AND NATION POLICY SUMMIT

November 30 – December 2, 2011

The Westin Kierland Hotel  
6902 E. Greenway Parkway • Scottsdale, AZ 85254

## SPOUSE/GUEST REGISTRATION FORM

STATES  
NATION

&

POLICY SUMMIT

PHOENIX, AZ  
NOV. 30 - DEC. 2, 2011

 Online  
www.alec.org

 Fax (*credit cards only*)  
202.331.1344

 Phone / Questions • Mon-Fri, 9am-5:30 pm Eastern  
Registration: 202.742.8538

### ATTENDEE INFORMATION IS REQUIRED TO REGISTER A SPOUSE OR GUEST

Last Name \_\_\_\_\_ First Name \_\_\_\_\_

Organization \_\_\_\_\_

Daytime phone \_\_\_\_\_

Email (*Confirmation will be sent by email*) \_\_\_\_\_

### SPOUSE / GUEST REGISTRATION

#### SPOUSE / GUEST REGISTRATION GUIDELINES

1. Spouse / guest registration is meant to accommodate legal spouse and immediate family members.
2. Attendees from the same organization must register independently. No exception will be made.
3. Spouse / guest designation will be clearly visible on name badge.

Last Name \_\_\_\_\_ First Name \_\_\_\_\_ Middle initial \_\_\_\_\_ Badge Nickname \_\_\_\_\_

Last Name \_\_\_\_\_ First Name \_\_\_\_\_ Middle initial \_\_\_\_\_ Badge Nickname \_\_\_\_\_

Last Name \_\_\_\_\_ First Name \_\_\_\_\_ Middle initial \_\_\_\_\_ Badge Nickname \_\_\_\_\_

#### SPOUSE / GUEST REGISTRATION FEES

<i>Number of Spouse/Guest(s)</i>	<i>Fee</i>	<i>TOTAL</i>
--------------------------------------	------------	--------------

Spouse / Guest *please note name(s) above* \_\_\_\_\_ \$ 150 \$ \_\_\_\_\_

#### METHOD OF SPOUSE / GUEST REGISTRATION PAYMENT

**Credit Card:** Credit cards will be charged immediately. Please fax to the above number for processing.

Amer Express

Card # \_\_\_\_\_

Visa

Cardholder (*please print*) \_\_\_\_\_

MasterCard

Exp Date (mm/yy) \_\_\_\_\_ / \_\_\_\_\_ Signature \_\_\_\_\_

#### REGISTRATION CONFIRMATION INFORMATION

Online registrants will receive immediate email confirmation. If registering by form, confirmation will be emailed within 72 hours of receipt of payment.

#### REGISTRATION CANCELLATION / REFUND INFORMATION

Registrations cancelled prior to 5pm Eastern November 7, 2011 are subject to a \$100 cancellation fee. Registrations are non-refundable after 5pm Eastern November 7, 2011.



## **American Legislative Exchange Council TASK FORCE OPERATING PROCEDURES**

### **I. MISSION OF TASK FORCES**

Assume the primary responsibility for identifying critical issues, developing ALEC policy, and sponsoring educational activities which advance the Jeffersonian principles of free markets, limited government, federalism, and individual liberty. The mission will be accomplished through a non-partisan, public and private partnership between ALEC's legislative and private sector members in the specific subject areas assigned to the Task Force by the Board of Directors.

### **II. TASK FORCE RESPONSIBILITIES**

- A. Task Forces have the primary responsibility for identifying critical issues and developing ALEC's official policy statements and model legislation appropriate to the **specific subject areas** of the Task Force.
- B. Task Forces serve as forums for an exchange of ideas and sharing of experiences between ALEC's state legislator and private sector members.
- C. Task Forces are responsible for developing and sponsoring the following educational activities appropriate to the specific subject area of the Task Force:
  - publications that express policy positions, including, but not limited to State Factors and Action Alerts;
  - educational communication and correspondence campaigns;
  - issue specific briefings, press conferences and press campaigns;
  - witness testimony and the activities of policy response teams;
  - workshops at ALEC's conferences; and
  - specific focus events.
- D. The Executive Director is to develop an **annual budget**, which shall include expenses associated with Task Force meetings and educational activities. A funding mechanism to finance all meetings and educational activities proposed by Task Forces must be available before they can be undertaken.



### ***III. GENERAL PROCEDURES***

- A. Requests from ALEC members for policy statements, model legislation and educational activities shall be directed by the Executive Director to the appropriate Task Force, or the Board of Directors if the issue does not fall within the **jurisdiction** of any Task Force. The appropriate Public and Private Sector Task Force Co-Chairs determine the agenda for each Task Force meeting, and the meetings will be called and conducted in accordance with these Operating Procedures.

The Director of Policy with the consent of the Executive Director assigns a model bill or resolution to the most appropriate Task Force based on Task Force content and prior jurisdictional history 35 days before a Task Force Meeting. All Task Force Co-Chairs will be provided an email or fax summary of all **model bills and resolutions 35 days before** the Task Force meeting

If both the Co-Chairs of a Task Force are in agreement that they should have jurisdiction on model legislation or a resolution, the legislation or resolution will be considered by the Task Force. If the other Task Force Co-Chairs believe they should have jurisdiction or if the author of the model bill or resolution does not agree on the jurisdictional assignment of the bill, they will have **10 days after the 35-day mailer deadline** to submit in writing or by electronic appeal to the Director of Policy their intent to challenge the jurisdiction assignment. The Director of Policy will notify the Executive Director who will in turn notify the National Chair and the Private Enterprise Board Chair. The National Chair and the Private Enterprise Board Chair will in turn refer the matter in question to the Board of Directors Task Force Board Committee. The Director of Policy will establish a conference call for the Task Force Board Committee co-chairs, the author, the affected Task Force Co-Chairs and the Director of Policy at a time convenient for all participants.

**The Task Force Board Committee Co-Chairs** shall listen to the jurisdictional dispute by phone or in person within 10 days of the request. If both Task Force Board Committee Co-Chairs are in agreement that the Director of Policy made an incorrect jurisdictional referral, only then will the model bill or resolution be reassigned to a committee as they specify once agreed upon by the **National Chair and the Private Enterprise Board Chair**. The bill or model resolution is still eligible to be heard in whatever Task Force it is deemed to be assigned to as if submitted to the correct Task Force for the 35-



day mailer. The National Chair and the Private Enterprise Board Chair decision is final on this model bill or resolution.

**Joint referral of model legislation and/or resolutions** are allowed if all the affected Task Force Co-Chairs agree. All model legislation and resolutions that have been referred to, more than one Task Force must pass the identical language in both Task Forces within two consecutive Task Force meetings. It is at the Task Force Co-Chairs discretion how they will handle the hearings of the model legislation or resolution. Both sets of co-chairs have the ability to call a working group, subcommittee, or simply meet consecutively or concurrently if necessary.

If the Task Force co-chairs both agree to waive jurisdiction, they may do so as long as another Task Force still has jurisdiction.

The National Chair and the Private Sector Board Chair will rely upon the Task Force Board Committee Co-Chairs for advice and recommendations on model legislation or resolutions when no jurisdiction in any of the existing Task Forces in operation can be found. The Task Force Board Committee Co-Chairs will work with the Executive Director and the Director of Policy to identify public and private sector Task Force members (not alternates) from the existing Task Forces should their expertise be of assistance to the Task Force Board Committee in reaching a determination and recommendation for approval by the National Chair and the Private Enterprise Board Chair.

- B. **The National Chair and the Private Sector Board Chair** will rely upon the Task Force Board Committee Co-Chairs for advice and recommendations on model legislation or resolutions when no jurisdiction in any of the existing Task Forces in operation can be found. The Task Force Board Committee Co-Chairs will work with the Executive Director and the Director of Policy to identify public and private sector Task Force members (not alternates) from the existing Task Forces should their expertise be of assistance to the Task Force Board Committee in reaching a determination and recommendation for approval by the National Chair and the Private Enterprise Board Chair.
- C. **The Board of Directors** shall have ultimate authority over Task Force procedures and actions including the authority to create, to merge or to disband Task Forces and to review Task Force actions in accordance with these Operating Procedures. Nothing in these Operating Procedures prohibits the Board of Directors from developing ALEC policy; however, such a practice



should be utilized only in exceptional circumstances. Before the policy is adopted by the Board of Directors, it should be sent to the Public and Private Sector Task Force Co-Chairs under whose jurisdiction the matter falls for review and comment back to the Board of Directors.

- D. The **operating cycle of a Task Force** is two years. A new operating cycle begins on January 1 of each odd numbered year and ends on December 31 of the following even numbered year. Task Force activities shall be planned and budgeted on an annual basis within each two-year operating cycle.
- E. If a Task Force is **unable to develop an operating budget**, the Board of Directors will determine whether to continue the operations of the Task Force. This determination will be made according to: (1) the level of membership on the Task Force, and (2) the need for continued services developed by the Task Force for ALEC.
- F. **The Board of Directors** shall have the authority to allocate limited general support funds to finance the annual operating budget of Task Forces that meet the requirements prescribed in Section III (E). The Executive Director shall determine, and report to the Board of Directors, the amount of general support funds available to underwrite such Task Forces.

#### **IV. MEMBERSHIP AND MEMBER RESPONSIBILITIES**

- A. The membership of a Task Force consists of legislators who are members in good standing of ALEC and are duly appointed to the Task Force, in accordance with Section VI (A) and private sector organizations that are full members of ALEC, contribute to the assessment for the Task Force operating budget, and are duly appointed to the Task Force, in accordance with Section VI (B). Private sector organizations that were full members of ALEC and contributed the assessment for the Task Force's operating budget in the previous year, can be appointed to the Task Force for the current year, conditional upon renewal of full ALEC membership and receipt of the current year's assessment for the Task Force operating budget prior to March 31<sup>st</sup>, unless an alternative date has been approved by the Executive Director.
- B. Each Task Force shall have least two **Co-Chairs**; a Public Sector Task Force Co-Chair and a Private Sector Task Force Co-Chair. The Public Sector Task Force Co-Chair must be a member of the Task Force and appointed in



accordance with Section VI (A). The Private Sector Co-Chair must represent a private sector member of the Task Force and be appointed in accordance with Section VI(B). The Co-Chairs shall be responsible for:

- (1) calling the Task Force and the Executive Committee meetings to order, setting the agenda and co-chairing such meetings;
- (2) appointing and removing legislators and private sector members to and from the Task Force Executive Committee and subcommittees;
- (3) creating subcommittees, and determining each subcommittee's mission, membership limit, voting rules, deadlines, and term of service; and
- (4) selecting Task Force members to provide support for and against Task Force policies during formal Board reviews.

- C. Each Task Force shall have an **Executive Committee** appointed by the Public and Private Sector Task Force Co-Chairs that is appropriate in number to carry out the work product and strategic plan of ALEC and the Task Force. The Executive Committee shall consist of the Public Sector Task Force Co-chair, the Private Sector Task Force Co-Chair, the subcommittee co-chairs, and the remainder will be an equal number of legislative and private sector Task Force members. The Executive Committee will be responsible for determining the operating budget and proposing plans, programs and budgets for the succeeding year in accordance with (Section V (B); determining if a proposed educational activity conforms to a previously approved model bill, resolution or policy statement in accordance with (Section IX (F); and determining if an emergency situation exists that justifies waiving or reducing appropriate time limits in accordance with (Section VIII (H)).
- D. Each Task Force may have any number of **subcommittees**, consisting of Task Force members and advisors to focus on specific areas and issues and make policy recommendations to the Task Force. The Task Force Co-chairs, shall create subcommittees and determine each subcommittee's mission, membership limit, voting rules, deadlines, and term of service. Any model bill, resolution or policy statement approved by a subcommittee must be approved by the Task Force before it can be considered official ALEC policy.
- E. Each Task Force may have advisors, appointed in accordance with Section VI (G). **Advisors** shall assist the members and staff of the Task Force. They shall be identified as advisors on official Task Force rosters, included in all official



Task Force mailings and invited to all Task Force meetings. Advisors may also have their expenses paid at Task Force meetings covered by the Task Force operating budget with the approval of the Task Force Co-Chairs. An advisor cannot be designated as the primary contact of a private sector Task Force member, cannot be designated to represent a private sector Task Force member at a Task Force, Executive Committee, or subcommittee meeting, and cannot offer or vote on any motion at a Task Force, Executive Committee, or subcommittee meeting.

#### ***V. Task Force Budgets***

- A. Each Task Force shall develop and operate a yearly budget to fund meetings.
- B. The **operating budget** shall be used primarily to cover expenses for Task Force meetings, unless specific funds within the budget are authorized for other use by the Task Force. The operating budget shall be assessed equally among the private sector members of the Task Force. The Executive Director, in consultation with the Task Force Co-Chairs shall determine which costs associated with each meeting will be reimbursed from the operating budget. Any funds remaining in a Task Force's operating budget at the end of a year are transferred to ALEC's general membership account.
- C. The operating budget shall not be used to cover Task Force meeting expenses associated with **alternate task force members'** participation, unless they are appointed by their State Chair to attend the Spring Task Force Summit with the purpose to serve in place of a Task Force Member who is unable to attend. Task Force meeting expenses of alternate task force members shall be covered by their state's scholarship account.
- D. The **programming budget** shall be used to cover costs associated with educational activities. Contributions to the programming budget are separate, and in addition to operating budget contributions and annual general support/membership contributions to ALEC. The Executive Director shall determine the contribution required for each educational activity.

#### ***VI. PROCESS FOR SELECTING TASK FORCE MEMBERS, CHAIRS, COMMITTEES AND ADVISORS***

**American Legislative Exchange Council**

- A. Prior to February 1 of each odd-numbered year, the current and immediate past National chairman will jointly select and appoint in writing **three legislative members and three alternates to the Task Force** who will serve for the current operating cycle, after receiving nominations from ALEC's Public and Private State Chairs, the Executive Director and the ALEC Public and Private Sector members of the Board. At any time during the year, the National Chairman may appoint in writing new legislator members to each Task Force, except that no more than three legislators from each state may serve as members of any Task Force, no legislator may serve on more than one Task Force and the **appointment cannot be made earlier than thirty days** after the new member has been nominated. In an effort to ensure the nonpartisan nature of each Task Force, it is recommended that no more than two legislators of any one political party from the same state be appointed to serve as members of any Task Force. A preference will be given to those ALEC legislator members who serve on or chair the respective Committee in their state legislature. A preference will be given to legislators who sponsor ALEC Task Force model legislation in the state legislature.
- B. Prior to January 10 of each odd-numbered year, the current and immediate past National Chairman will jointly select and appoint in writing **the Task Force Chair** who will serve for the current operating cycle, after receiving nominations from the Task Force. Nominations will be requested by the outgoing Task Force Chair and may be placed in rank order prior to transmittal to the Executive Director no later than December 1 of each even-numbered year. No more than five names may be submitted in nomination by the outgoing Task Force chair. The current and immediate past National Chairmen will jointly make the final selection, but should give strong weight to the recommendations of the outgoing Task Force Chair. In an effort to empower as many ALEC leaders as possible, State Chairs and members of the Board of Directors will not be selected as Task Force Chairs. Task Force Chairs shall serve for one operating cycle term. Where special circumstances warrant, the current and immediate past National Chairmen may reappoint a Task Force Chair to a second operating cycle term.
- C. Prior to February 1 of each odd numbered year, the Public and Private Sector Task Force Co-Chairs will select and appoint in writing the legislative and private sector members of the **Task Force Executive Committee**, who will serve for the current operating cycle. The Public and Private Sector Task Force Co-Chairs will select and appoint in writing the legislative and private sector members and advisors to any subcommittee.



- D. Prior to February 1 of each year, the Private Enterprise Board Chair and the immediate past Private Enterprise Board Chair will select and appoint in writing the private sector members to the Task Force who will serve for the current year. The appointment letter shall be mailed to the individual designated as the primary contact for the private sector entity. At any time during the year, the Chair of the Private Enterprise Board may appoint in writing **new private sector members** to each Task Force, but no earlier than thirty days after the new member has qualified for full membership in ALEC and contributed the assessment for the appropriate Task Force's operating budget.
- E. Prior to January 10 of each odd-numbered year, the Chair of the Private Enterprise Board and the immediate past Private Enterprise Board Chair will select and appoint in writing the **Task Force Private Sector Co-Chair** who will serve for the current operating cycle, after receiving nominations from the Task Force. Nominations will be requested by the outgoing Task Force Private Sector Chair and may be placed in rank order prior to transmittal to the Chair of the Private Enterprise Board. The Chair and the immediate past Chair of the Private Enterprise Board will make the final selection, but should give strong weight to the recommendations of the outgoing Private Sector Task Force Co-Chair. In an effort to empower as many ALEC private sector members as possible, Private Enterprise State Chairs and members of the Private Enterprise Board will not be selected as Private Sector Task Force Co-Chairs. Private Sector Task Force Co-Chairs shall serve for one operating cycle term. Where special circumstances warrant, the current and immediate past Chair of the Private Enterprise Board may reappoint a Task Force Private Sector Chair to a second operating cycle term.
- F. Prior to February 1 of each odd-numbered year, the Task Force Private Sector Co-Chair will select and appoint in writing the **private sector members of the Task Force Executive Committee**, who will serve for the current operating cycle. The Task Force Private Sector Co-Chair shall select and appoint in writing the private sector members of any subcommittees.
- G. The Public and Private Sector Task Force Co-Chairs, may jointly appoint subject matter experts to serve as **advisors** to the Task Force. The National Chair and the Private Enterprise Board Chair may also jointly recommend to the Task Force Co-Chairs subject matter experts to serve as advisors to the Task Force.



## VII. **REMOVAL AND VACANCIES**

- A. The National Chair may remove any Public Sector **Task Force Co-Chair** from his position and any legislative member from a Task Force with or without cause. Such action will not be taken except upon thirty days written notice to such Chair or member whose removal is proposed. For purposes of this subsection, cause may include failure to attend two consecutive Task Force meetings.
- B. The Public Sector Task Force Co-Chair may remove any legislative member of an **Executive Committee or subcommittee** from his position with or without cause. Such action shall not be taken except upon thirty days written notice to such member whose removal is proposed. For purposes of this subsection, cause may include failure to attend two consecutive meetings.
- C. The Chairman of the Private Enterprise Board may remove **any Private Sector Task Force Co-Chair** from his position and any private sector member from a Task Force with cause. Such action shall not be taken except upon thirty days written notice to such Chair or member whose removal is proposed. For purposes of this subsection, cause may include but is not limited to the non-payment of ALEC General Membership dues and the Task Force dues..
- D. The Private Sector Task Force Co-Chair may remove any **private sector member of an Executive Committee or subcommittee** from his position with cause. Such action shall not be taken except upon thirty days written notice to such member whose removal is proposed. For purposes of this subsection, cause may include but is not limited to the non-payment of ALEC General Membership dues and the Task Force dues.
- E. The Public and Private Sector Task Force Co-Chairs may remove an **advisor** from his position with or without cause. Such action shall not be taken except upon thirty days written notice to such advisor whose removal is proposed.
- F. Any member or advisor may **resign** from his position as Public Sector Task Force Co-Chair, Private Sector Task Force Co-Chair, public or private sector Task Force member, Task Force advisor, Executive Committee member or subcommittee member at any time by writing a letter to that effect to the Public Sector and Private Sector Task Force Co-Chairs. The letter should specify the



effective date of the resignation, and if none is specified, the effective date shall be the date on which the letter is received by the Public and Private Task Force Co-Chairs.

- G. All **vacancies** for Public Sector Task Force Co-Chair, Private Sector Task Force Co-Chair, Executive Committee member and subcommittee member shall be filled in the same manner in which selections are made under Section VI. All vacancies to these positions must be filled within thirty days of the effective date of the vacancy.

### **VIII. MEETINGS**

- A. **Task Force meetings** shall only be called by the joint action of the Public and Private Sector Task Force Co-Chairs. Task Force meetings cannot be held any earlier than thirty-five days after being called, unless an emergency situation has been declared pursuant to Section VIII (H), in which case Task Force meetings cannot be held any earlier than ten days after being called. It is recommended that, at least once a year, the Task Forces convene in a common location for a joint Task Force Summit. **Executive Committee meetings** shall only be called by the joint action of the Public and Private Sector Task Force Co-Chairs and cannot be held any earlier than three days after being called, unless the Executive Committee waives this requirement by unanimous consent.
- B. **At least forty-five days** prior to a task force meeting any model bill, resolution or policy must be submitted to ALEC staff that will be voted on at the meeting. At least thirty-five days prior to a Task Force meeting, ALEC staff shall distribute copies of any model bill, resolution or policy statement that will be voted on at that meeting. This requirement does not prohibit modification or **amendment** of a model bill, resolution or policy statement at the meeting. This requirement may be waived if an emergency situation has been declared pursuant to Section VIII(H).
- C. **All Task Force meetings are open** to registered attendees and invited guests of ALEC meetings and conferences. Only regular Task Force Members may introduce any resolution, policy statement or model bill. Only Task Force members will be allowed to participate in the Task Force meeting discussions

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and be seated at the table during Task Force meetings, unless otherwise permitted by the Public and Private Sector Task Force Co-Chairs.

- D. ALEC private sector member organizations may only be represented at Task Force and Executive Committee meetings by the individual addressed in the **appointment letter** sent pursuant to Section VI (D) or a designee of the private sector member. If someone other than the individual addressed in the appointment letter is designated to represent the private sector member, the designation must be submitted in writing to the Public and Private Sector Task Force Co-Chairs before the meeting, and the individual cannot represent any other private sector member at the meeting.
- E. All Task Force and Executive Committee meetings shall be conducted under the guidelines of **Roberts Rules of Order**, except as otherwise provided in these Operating Procedures. A copy of the Task Force Operating Procedures shall be included in the briefing packages sent to the Task Force members prior to each meeting.
- F. A majority vote of legislative members present and voting and a majority vote of the private sector members present and voting, polled separately, are required to approve any motion offered at a Task Force or Executive Committee meeting. A **vote** on a motion to reconsider would be only with the sector that made the motion. Members have the right, in a voice vote, to abstain and to vote present by roll-call vote. In all votes a member can change their vote up until the time that the result of the vote is announced. Only duly appointed members or their designee as stated in Section VIII (D) that are present at the meeting may vote on each motion. **No proxy, absentee or advance voting is allowed.**
- G. The Public Sector Task Force Co-Chair and the Private Sector Task Force Co-Chair, with the concurrence of a majority of the Executive Committee, polled in accordance with Section VIII (F), may schedule a **Task Force vote by mail or any form of electronic communication** on any action pertaining to policy statements, model legislation or educational activity. The deadline for the receipt of votes can be no earlier than thirty-five days after notification of the vote is mailed or notified by any form of electronic communication, unless an emergency situation is declared pursuant to Section VIII (H), in which case the deadline can be no earlier than ten days after notification is mailed or notified by any form of electronic communication. Such votes are exempt from all rules in Section VIII, except: (1) the requirement that copies of model legislation and



policy statements be mailed or notified by any form of electronic communication with the notification of the vote and (2) the requirement that a majority of legislative members voting and a majority of the private sector members voting, polled separately, is required to approve any action by a Task Force.

H. For purposes of Sections VIII(A), (B) and (G), an **emergency situation** can be declared by:

- (1) Unanimous vote of all members of the Task Force Executive Committee present at an Executive Committee meeting prior to the meeting at which the Task Force votes on the model bill, resolution or policy statement; or
- (2) At least three-fourth majority vote of the legislative and private sector Task Force members (voting in accordance with Section VIII (F)) present at the meeting at which the members vote on the model bill, resolution or policy statement.

I. Ten Task Force members shall **constitute a quorum** for a Task Force meeting. One-half of the legislative and one-half of the private sector members of an Executive Committee shall constitute a quorum for an Executive Committee meeting.

## IX. ***REVIEW AND ADOPTION PROCEDURES***

- A. All Task Force policy statements, model bills or resolutions shall become **ALEC policy** either: (1) upon adoption by the Task Force and affirmation by the Board of Directors or (2) thirty days after adoption by the Task Force if no member of the Board of Directors requests, within those thirty days, **a formal review by the Board of Directors**. General information about the adoption of a policy position may be announced upon adoption by the Task Force.
- B. The Executive Director shall notify the Board of Directors of the approval by a Task Force of any policy statement, model bill or resolution within ten days of such approval. Members of the Board of Directors shall have thirty days from the date of Task Force approval to review any new policy statement, model bill or resolution prior to adoption as official ALEC policy. Within those thirty days, any member of the Board of Directors may request that the policy be



**formally reviewed** by the Board of Directors before the policy is adopted as official ALEC policy.

- C. A member of the Board of Directors may request a formal review by the Board of Directors. The **request must be in writing** and must state the cause for such action and a copy of the letter requesting the review shall be sent by the National Chairman to the appropriate Task Force Chair. The National Chairman shall schedule a formal review by the Board of Directors no later than the next scheduled Board of Directors meeting.
- D. The review process will **consist of key members of the Task Force**, appointed by the Task Force Chair, providing the support for and opposition to the Task Force position. Position papers may be faxed or otherwise quickly transmitted to the members of the Board of Directors. The following is the review and adoption procedures:
  - **Notification of Committee:** Staff will notify Task Force Chairs and the entire task force when the Board requests to review one of the Task Forces' model bills or resolutions.
  - **Staff Analysis:** Will be prepared in a neutral fashion. The analyses will include:
    - History of Task Force action
    - Previous ALEC official action/resolutions
    - Issue before the board
    - Proponents arguments
    - Opponents arguments
  - **Standardized Review Format:** To ensure fairness, a set procedure will be used as the format to ensure the model bill/resolution has a fair hearing before the Board.
    - Task Force Chair(s) will be invited to attend the Board Review
    - Task Force Chair(s) will decide who will present in support and in opposition for the model bill/resolution before the Board.
    - Twenty minutes that is equally divided will be given for both sides to present before the Board.
    - It is suggested that the Board not take more than twenty minutes to ask questions of the presenters.
    - Presenters will then be excused and the Board will have a suggested twenty more minutes for discussion and vote.



- All votes will be recorded for the official record.
- **Notification of Committee:** The Director of Policy will notify presenters immediately after the vote. If the Board votes to send the model bill/resolution back to the task force, the Board will instruct the Director of Policy or another board member what to communicate.

**E. The Board of Directors can:**

- (1) Vote to affirm the policy or affirm the policy by taking no action, or
- (2) Vote to disapprove the policy, or
- (3) Vote to return the policy to the Task Force for further consideration providing reasons therefore.

F. Task Forces may only undertake educational activities that are based on a policy statement, model bill or resolution that has been adopted as official ALEC policy, unless the Task Force votes to undertake the educational activity, in which case the educational activity is subjected to the same review process outlined in this Section. It is the responsibility of the Task Force Executive Committee to affirm by three-fourths majority vote conducted in accordance with Section VIII that an educational activity conforms to a policy statement, model bill or resolution.

**X. EXCEPTIONS TO THE TASK FORCE OPERATING PROCEDURES.**

Exceptions to these Task Force Operating Procedures must be approved by the Board of Directors.